

## The Promise of School Choice for Improving the Education of Low-Income Minority Children<sup>\*</sup>

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Elaine Jones, the executive director of the NAACP Legal Defense Fund, has emphasized the plight of urban children from low-income families who are “locked into those schools.”<sup>1</sup> She believes that it is essential for our society to improve “those schools,” and for that to happen, in her view, we need to provide our urban public schools with better teachers and more money. A different approach to improving underprivileged children’s educational opportunities, however, is to enable greater numbers of families to pull their children out of “those schools” and to enroll them elsewhere. Is expanded school choice the right thing to offer to families whose children are underserved by the urban public schools to which they are currently assigned?<sup>2</sup>

Choice supporters believe it is. They see choice not only as empowering the poor family to do better by its child, but also as providing traditional neighborhood public schools with competitive pressures that will spur them to improve. More generally, they seek to extend throughout society the advantages available to better-off families.

After all, middle-class and professional-class families have long enjoyed school choice. They primarily exercise their choice by moving to a different school district, quite often in the suburbs, taking their children to a new home where they think better schooling awaits them.<sup>3</sup> In addition, approximately 12% of American families put their children in private schools at the family’s expense, or they home-school their children, typically by the stay-at-home mom.<sup>4</sup>

For most low-income and working-class families, however, moving to the

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1. Elaine Jones, *Luck Was Not a Factor: The Importance of a Strategic Approach to Civil Rights Litigation*, in SYMPOSIUM, REKINDLING THE SPIRIT OF *BROWN V. BOARD OF EDUCATION*, 6 AFR.-AM. L. & POL'Y REP. 208; 11 ASIAN L.J. 290; 15 BERKELEY LA RAZA L.J. 81; 19 BERKELEY WOMEN'S L.J. 409; CALIF. L. REV. (2004).

2. For an argument in favor of providing school choice for low-income families, see JOHN E. COONS & STEPHEN D. SUGARMAN, *EDUCATION BY CHOICE: THE CASE FOR FAMILY CONTROL* (1999). For an earlier proposal for expanding family choice of schools through “family power equalizing,” see JOHN E. COONS ET AL., *PRIVATE WEALTH AND PUBLIC EDUCATION* 256 (1970).

3. In these remarks, descriptions of school choice in America draw generally upon Jeffrey R. Henig & Stephen D. Sugarman, *The Nature and Extent of School Choice*, in *SCHOOL CHOICE AND SOCIAL CONTROVERSY* 13 (Stephen D. Sugarman & Frank Kemerer eds., 1999).

4. *Id.* at 25-26, 29.

suburbs, paying for private schools, and home-schooling are all financially infeasible. We could extend choice to low-income families by providing them with vouchers that would pay for their children's education at private schools.<sup>5</sup> Polls suggest that many low-income parents are eager for this option.<sup>6</sup> Right now, however, this option is a reality for but a few low-income families in America. Publicly funded vouchers for the poor are currently available only in Milwaukee, Cleveland, and a few places in Florida.<sup>7</sup> Privately funded vouchers (i.e., scholarships) are available in a large number of cities across the nation, but they only reach a relatively small number of low-income children.<sup>8</sup> Some school choice advocates are eager to see a rapid expansion of public programs that provide vouchers for children from low-income families. Many "liberal" organizations and their leaders bitterly oppose this idea, however, because they reject privatizing schooling in principle and because they reject subsidizing religious school choice.<sup>9</sup> Because its political future is so uncertain, I put aside the private school voucher idea for the purposes of this discussion. Instead, I focus on models of school choice that do not rely on vouchers that could be used at private schools.

This means giving low-income families options within the public school sector that do not require moving their place of residence. Such options are highly feasible and, despite our common perception that children attend neighborhood schools, several types of school choice plans are already in place. Indeed, we have more choice than most people realize, and in many places the available choices are expanding. Five such public school plans are next described.

First, in some school districts children are no longer assigned to schools. Instead, all families must choose a school for their children. Both Berkeley and San Francisco, California, have plans like this,<sup>10</sup> and for quite some time this has also been the policy in Cambridge, Massachusetts.<sup>11</sup> In these public school districts, no one has priority rights at any particular neighborhood school. Families are allowed to request their closest school, but they have to list second and third choices as well. Because communities have typically embraced this approach as a way to achieve racial integration,<sup>12</sup> racial balance considerations have generally counted a great deal

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5. See generally JOHN E. COONS & STEPHEN D. SUGARMAN, MAKING SCHOOL CHOICE WORK FOR ALL FAMILIES (1999); JOHN E. COONS & STEPHEN D. SUGARMAN, SCHOLARSHIP FOR CHILDREN (1992).

6. Henig & Sugarman, *supra* note 3, at 30.

7. Vouchers are supposed to become available to a modest number of Colorado families, but a trial court there has invalidated the plan. See Tamar Lewin, *Colorado's New Voucher Law Is Struck Down in State Court*, N.Y. TIMES, Dec. 4, 2003, at A24.

8. Henig & Sugarman, *supra* note 3, at 28.

9. See Stephen D. Sugarman, *Liberals and the School Choice Debate*, 67 CONGRESS MONTHLY, Nov/Dec, 2000, at 6.

10. For a description of San Francisco's school assignment system, see San Francisco Unified School District, *Student Assignment Process*, at <http://portal.sfusd.edu/template/default.cfm?page=policy.placement.process>. Berkeley employs a system of residential zones for student assignments. See Berkeley Unified School District, *School Zones and Street Directory*, at [http://www.berkeley.k12.ca.us/OS/OS\\_zones.html](http://www.berkeley.k12.ca.us/OS/OS_zones.html).

11. Cambridge's school assignment methodology involves enumerated "diversity factors." See Cambridge Public Schools, *Controlled Choice Plan* (Dec. 18, 2001), available at <http://www.cpsd.us/Web/PubInfo/ControlledChoice.pdf>.

12. See, e.g., MASSACHUSETTS DEPARTMENT OF EDUCATION & THE OFFICE OF EDUCATIONAL EQUITY, CONTROLLED CHOICE IN BOSTON: THE FIRST YEAR (1990).

in determining who is assigned to their first choice school and who has to accept a lesser preference. However, because using racial criteria in matching schools to family preferences has recently become legally uncertain,<sup>13</sup> some all-choice districts have instead adopted family income criteria in determining which families get their first choice school, with the goal of achieving economically mixed schools in the context of school choice. In places like Cambridge and Berkeley, where race and income are well-connected, economic class integration will also bring substantial racial integration.

Under a second model of public school choice, some families send their children to public schools located outside their local school district. "Inter-district transfers" are formally permitted in a number of states, and, for example, in places like Iowa and Minnesota perhaps 2-3% of all children attend schools outside their district through such a program.<sup>14</sup> In most of these inter-district transfer plans, students do not need the permission of their local district and have the right to attend any school in another district so long as there is room for them.

In other places, this sort of choice is largely invisible and technically illegal. Parents falsify their children's residences in order to achieve an inter-district transfer. In the area near the University of California at Berkeley, for example, many parents try to get their children into the Albany and Berkeley School Districts in this way. In Washington, D.C., as many as 10% of the children attending certain public schools do not actually live in the district zone in which they are supposed to reside to gain legal access to those schools.<sup>15</sup>

Although parents who send children to schools outside their home districts presumably think this is better for those children, these plans do not necessarily promote racial integration or specially benefit low-income minority families. However, some voluntary inter-district transfer schemes are specifically created to promote racial and economic integration. Boston's voluntary busing plan, known as METCO, and the metropolitan solutions in St. Louis and Kansas City are examples.

A third public school choice model combines assigned neighborhood schools with specialized "choice" schools. In those districts, parents can either send their children to the local public school or select from a menu of other schools, including "alternative schools" or "magnet schools." The choice schools often have a special curricular emphasis, allowing districts to tailor selected programs to childrens' needs and interests. Several districts, including Oakland, California, have opened, or are in the process of opening, quite a number of rather small choice schools. These small schools may share space in a building with one or more other schools. "Magnet schools" in particular have traditionally been explicitly aimed at racial integration by favoring the choices of families whose children will improve the racial balance of the school.

Charter schools provide yet a fourth model of school choice.<sup>16</sup> Although nationwide less than 2% of children attend charter schools, there has been a rapid

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13. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003).

14. Henig & Sugarman, *supra* note 3, at 22.

15. *Id.* at 22-23.

16. For more detailed descriptions and discussions of charter schools, see Stephen D. Sugarman and Emlei M. Kobuyama, *Approving Charter Schools: The Gate-Keeper Function*, 53 ADMINISTRATIVE L. REV. 869 (2001).

growth in the number of these schools in the past few years.<sup>17</sup> There are now approximately 3,000 charter schools in the forty or so states that allow them.<sup>18</sup> They are most common in Arizona, California, Florida, and Texas.<sup>19</sup> Charter schools are somewhat like “alternative” schools, yet they are structured to enjoy greater freedom from state regulation and local supervision. Moreover, many charter schools are operated by profit-making educational management companies, although other charter schools are formed as non-profit organizations run by people from the local community. In many places, districts that sponsor charter schools require them to contribute to racial integration, and in some states charters are more likely to be granted to schools that will enroll low-income children.

Finally, the recently adopted federal law that is informally called “No Child Left Behind”<sup>20</sup> provides a fifth model. Under this regime, the current Bush Administration is beginning to require school districts to offer alternate choices to families when their children fail to learn in the schools they have been attending.<sup>21</sup> Some school districts are cooperating with this new scheme while others are resisting, at least for now. Although low-income minority pupils are disproportionately qualifying for this option, it is too soon to know how this choice model will actually function.

These five school choice models demonstrate the great variety of approaches now in place. Nearly 15% of American school children attend public schools chosen for them under one of these models.<sup>22</sup> If we include families who send their children to private schools, home-school or make a school choice for their children by moving their residence to a new school district, then probably more than half of American children today attend a school of their family’s choice.<sup>23</sup> Yet, at the same time, the amount of choice that now exists should not be exaggerated. In many communities none of these options is practically available to most children from low-income families who continue to be assigned to a public school from which there may be no escape.

The public policy question then, is whether we should be promoting more public school choices like those described here. Can more choice mean better schooling opportunities for more children of working-class and low-income parents? Can the competitive pressure of increased choice prompt traditional neighborhood schools to become more responsive to local families and improve the education of their children? Can more choice help to promote racial integration? Or, if instead it enables minority families to gather together in schools whose educational themes emphasize their racial or ethnic backgrounds (e.g., bilingual-bicultural schools or schools with Afro-centric curricula), would that be desirable? These are important

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17. The Center for Education Reform posts updated lists of charter schools across the country. See The Center for Education Reform, *Charter Connection*, at <http://www.edreform.com/index.cfm?fuseAction=section&pSectionID=14&cSectionID=34>.

18. *Id.*

19. *Id.*

20. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

21. See, e.g., Elissa Gootman, *Schools Seeking Alternatives to Granting More Transfers*, N.Y. TIMES, Sept. 30, 2003, at A1.

22. Updated statistics on the distribution of children in the educational system are compiled by the National Center for Education Statistics. See National Center for Education Statistics, *Education Statistics at a Glance*, at <http://nces.ed.gov/edstats/>.

23. Henig & Sugarman, *supra* note 3.

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questions that supporters of social justice for all American children should be discussing as we come to the fiftieth anniversary of *Brown v. Board of Education*.

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