

9
—**Implementing
*No Child
Left Behind*****RONALD BROWNSTEIN**

The debate over school choice may be about to take a new turn. For years, reformers of left and right have dueled over whether the best way to shake up poorly performing public schools is to provide parents with the opportunity to switch to private schools (through vouchers) or to allow parents to move their children to better public schools (through public school choice). The federal No Child Left Behind Act, which President George W. Bush signed into law in June 2002, represented a victory for the advocates of public school choice: the law rejected funding for private school vouchers, but did mandate that districts allow children in persistently failing schools to transfer to public schools that perform better.

The law thus established a nationwide test of public school choice as a means of both providing better opportunities for individual kids and creating pressure on schools that are performing poorly. The results of that test are now coming in—and they don't look very encouraging. From coast to coast, school districts large and small report that hardly any students in failing schools are using the choice provisions of the federal

law to move to other public schools. Even in some of the nation's largest cities, the number of kids traveling across town to attend better schools on any given morning might not fill a single school bus.

In part, the law's impact may be tempered by parents' inertia, lack of knowledge, or reluctance to upset routines and friendships by removing their children from neighborhood schools. Another problem is the sheer lack of high-quality public school alternatives within reasonable driving distance of a failing urban school; given the choice between the low-performing school in their own neighborhood and the mediocre school ten miles away, parents may stick to the path of least resistance.

So far there is little evidence that suburban schools are opening their doors to refugees from the urban systems. The federal law encourages such transfers, but does not require them, and most urban superintendents have found little enthusiasm for the idea among their suburban neighbors. In Dayton, Ohio, for instance, Superintendent Percy Mack says that he was turned down by half a dozen suburban districts when he asked them to accept children from the poorly performing city schools. "Basically what they said was they did not have space within those districts for any of our kids," he says. This is a problem familiar to education reformers: a voluntary twenty-five-year-old program that sends minority students from Boston to surrounding suburban districts has a waiting list that exceeds 12,000 kids because the receiving schools say they don't have enough space to accept more children.

Moreover, these obstacles are compounded by the fact that few districts are making it easy for parents to exercise their right to choose or to avail themselves of the related option that offers "supplemental services," such as after-school tutoring,

Implementing No Child Left Behind

215

to students who remain in schools that have failed to improve student performance.

Massive resistance might be too strong a term to describe the way in which local school officials are implementing these new options for parents. But not by much. Using both subtle and overt strategies, school districts of every size have made it difficult for parents of children in failing schools even to learn about the new choices, and they structured the programs in ways that make them less attractive to the parents who might be interested. “The only way you make something like this work is to fully inform parents what their options are and how to exercise their options, and school superintendents aren’t doing that,” says William L. Taylor, chairman of the Citizens Commission on Civil Rights, a liberal advocacy group.

The lack of enthusiasm, and in some cases overt hostility, toward the new requirements underscores the difficulty of implementing any reform that requires school districts to impose changes that challenge their bureaucratic self-interest. It also raises questions about whether public school choice, as presently constructed, can have anywhere near the impact its supporters have long hoped for. The coming debate will be over whether the solution is to create a more sweeping form of public school choice or to revive private school vouchers to create the alternative the public system has so far squelched.

Resistance Movements

The public school choice and supplemental services provisions of the No Child Left Behind Act were to be the most tangible lifelines for parents whose children attend low-performing schools. Schools that fail to make “adequate yearly progress” in improving student performance on standardized reading and math tests for two years in a row are subject to the

Act's sanctions. Their students must be allowed to transfer to a better school, with the school district paying the transportation costs. Alternatively, children who choose to remain in low-performing schools are eligible for after-school and weekend tutoring once their school fails to make adequate yearly progress for three years running.

This approach was meant both to widen opportunities for students and to place competitive pressures on the schools. Schools that didn't improve would risk losing students and the accompanying state financial aid. They would also be forced to divert some of their Title I money into providing transportation and after-school tutoring programs. This was supposed to give schools and districts powerful new incentives to improve.

Or to Resist the Law

In its first year, the transfer provisions of the new federal education law have had as much impact on the operations of the major school systems as a ping-pong ball fired at a battleship. In Chicago, of the 125,000 kids in 179 failing schools who were eligible to transfer to other public schools last September, less than 800 have switched. In Los Angeles, where about 200,000 students in 120 schools were eligible, less than 50 have changed schools. In New York, where 220,000 children in more than 300 schools were eligible, just 1,507 moved.

It's not only in the largest cities where the law has fizzled. In Cleveland, where 15,000 students in 21 schools were eligible, just 36 children requested transfers in the fall semester—and of those, nine eventually returned to their original schools. In Boston, where students in 65 schools were eligible, apparently no students have used the new law's provisions to change schools. Likewise, no students have moved in Dayton,

Implementing No Child Left Behind

217

Ohio, though 10 of the district's 25 schools were on the state's list of failing schools. In Louisville, Kentucky, 2,900 kids in the Jefferson County Public Schools were eligible to transfer. Only 180 have moved.

What went wrong? The answer varies from city to city, though similar threads run through many of the tales.

In Chicago, local and state officials limited the program in ways that severely reduced its attractiveness to parents. Last summer, the state legislature passed a law saying that schools with selective enrollment, such as centers for gifted children, and those considered to be operating over capacity did not have to accept transfers from the poorly performing schools. (The federal law allows such exemptions so long as they were in place before July 1, 2002.)

Then the district offered transfers only to students in 48 of the 179 schools that had failed to make adequate yearly progress. All of the 48 schools were elementary schools. In the end, even with these limits, about 2,000 parents requested transfers, says Phil Hansen, the chief accountability officer at the Chicago Public Schools. But because of capacity constraints at the schools designated to receive the transfers, just 1,100 applications were granted. By the time school was under way, many parents had second thoughts, and fewer than 800 children had moved.

The Neighborhood School

For the city, Hansen says, the moral of the story was that most parents don't want to move their children from their neighborhood school, no matter how miserable its scores on standardized tests. "The lesson we learned, which we kind of knew already," he says, "is that Chicago is a city of neighborhoods. Parents take pride in their neighborhood school; even if it is a

low-performing school, parents feel closeness to that neighborhood school. What we heard from parents more often than not is, I don't want my children to go to another school, but what are you going to do to make my school better?"

Madeline Talbott, the lead organizer for Illinois ACORN, a group that lobbies on behalf of low-income families, doesn't entirely disagree. Parents, she says, are reluctant to send their children to a different neighborhood, one that they might have difficulty reaching in an emergency. But she says the way the city limited the choices gave parents little incentive to accept that risk.

"There were a lot of reasons we felt the way the thing was set up was pretty useless," she says. "We felt the choice provision, at least here, was something of a sham. It was a very expensive transfer of kids from one school to another that wouldn't necessarily be an improvement and would not necessarily have the support of the parent."

The problem began, she noted, when the state exempted many of the best schools in the city from accepting students from the low-performing schools. The way the federal law measures schools compounded the difficulty. Under the No Child Left Behind Act, schools are ranked by the trend, not the absolute level, of their students' performance on the standardized reading and math tests. That meant a school might be designated "needing improvement" because it had failed to raise scores over the past several years—but still could have a higher absolute score than a school that had met the federal standard because it had made steady gains from a lower base. The result was that Chicago, in some instances, offered parents a chance to transfer their children into schools whose overall test scores were lower than those of the schools they were already attending.

In the end, ACORN supported the city's proposal to limit

Implementing No Child Left Behind

219

choice to just the 48 schools and to use most of the money that would have gone into busing to fund improvements in the failing schools. "If we could have constructed a plan that gave children in low-income, low-performing schools a real opportunity, we would have supported it," Talbott says. "But we looked and looked and could not figure one out."

The lack of better alternatives for parents in poorly performing schools may be an even greater problem in smaller cities. In Dayton, Ohio, the initial state review concluded that all 25 of the district's schools had failed to make adequate progress. After further analysis, the state concluded that test scores had improved enough at 10 of the city's schools to lift them out of that category. "However, those 10 schools resembled the 15 that did need improvement," says schools superintendent Percy Mack. "Some of them even had lower scores" than the 15 schools that remained on the state's list of failing schools.

In that circumstance, he says, the district decided that it made little sense to offer parents a chance to transfer their children to schools that were no better than the ones they were attending. It's a problem, he says, that is likely to be common in smaller and older cities. "In the major cities, where you are covering major areas of space, where some of the city schools extend out into the suburban areas, then you may find you have different looks and achievements in the schools," he says. "But in the smaller areas . . . you are going to see a lot of the schools look very similar."

Didn't You Get the Notice?

In New York City, the deficiency was less in capacity than in motivation. "There is a lot of blame to go around," says Eva Moskowitz, a centrist Democrat from the east side of Manhat-

tan who chairs the City Council's education committee. "I think on the local level there really is resistance to embracing choice."

The breakdown began, she says, with the New York City Department of Education's decision to let each school district in the city decide how to contact parents about the option to transfer from poorly performing schools. Rather than writing directly to parents, she says, many districts apparently sent the notice home in children's backpacks—an excellent way to ensure that few parents ever see it. And for those who managed to fish out the notice from the swamp of old homework assignments, baseball cards, and snack wrappers in the backpack, the letters themselves weren't much more illuminating.

"The letter was not a particularly encouraging letter, and it was quite difficult to understand," says Moskowitz. "I have a Ph.D. in American history and I had to read it about three times to figure out exactly whether this choice was guaranteed, and who do I contact, and am I going to have to pay for the transportation? It also wasn't clear if I could pick a school out of my district."

As a result, few parents seem to have known about their options. A December 2003 poll by the Foundation for Educational Reform and Accountability found that 85 percent of New York City parents with children in failing schools were unaware that the schools were on the state's list of low-performing schools. The Albany-based foundation, which supports school choice, also found that 94 percent of the parents were "likely" to request a transfer if they were made aware of the option.

Even parents who understood their rights then found themselves confronting the labyrinth of the city's often impenetrable school bureaucracy. As in Chicago, "Parents who wanted a choice complained that the choice they were given had worse scores than the school their child was in," Moskowitz contin-

ues. “Others found that . . . if they had questions, and they wanted to see the school [available for transfer] they were told they weren’t allowed to visit. The stories run the gamut, but it does seem there was either passive or active resistance to offering parents real choice.”

Similar problems later resurfaced in the way the school districts notified parents of students who were eligible for the new after-school tutoring services established under the federal law. After the *New York Times* revealed in November 2002 that only 10,000 of the nearly quarter-million eligible students had signed up for the supplemental services, the city was forced to extend the deadline for applications. The problem, one city Education Department official acknowledged, is that districts did not want to lose the Title I money they would have to give to parents to obtain the after-school tutoring—and so did little to make parents aware of the opportunity. “Part of the problem is folks wanted to keep the money within the system,” said the official. “Did the folks on the ground do an adequate job of saying to parents that the resources were available? The answer is no.”

The breakdown in both the choice and the tutoring programs was so overwhelming that in December, New York City mayor Michael Bloomberg and Joel Klein, the new, Bloomberg-appointed schools chancellor, announced that they were taking over the process. Now, Bloomberg said, the central Department of Education would assume responsibility for notifying parents and establishing a process that would allow students in failing schools to transfer to better schools across the city, even outside their home districts. Watching the announcement, Moskowitz was encouraged but not entirely convinced. “I guess I am of two minds,” she says. “It’s hard to imagine it getting any worse. . . . Having said that, it’s not as if the central [school administration] has any track record of doing this, or

anything else, particularly well.” New York City’s intransigence even provoked a class-action lawsuit filed in January 2003 by parents claiming that the New York and Albany school districts had denied students their rights to transfers and to free tutoring.

New York was hardly alone in cloaking the new options. One potential reason that so few students transferred in Cleveland, for instance, is that the district didn’t notify parents that the choice was available until four days before school began—at which point understandably few were enthusiastic about uprooting their children. In Los Angeles some parents were not notified until after the school year began. The breakdowns extended up the bureaucratic line; many states didn’t notify cities which schools were failing until late in the summer, which gave them little time to contact parents. And many states were late in designating the firms that could provide after-school tutoring, with the result that districts, once again, had less time to notify parents. Illinois education officials initially told the Chicago schools they would not have to offer the tutoring services in failing schools until September 2003—which left district officials scrambling when the federal Department of Education decreed that they would have to begin offering the services early in 2003.

Not all school districts have been so resistant. Officials in Portland, Oregon, have gone out of their way to make parents aware of their opportunities. In October 2001, even before the federal bill had passed, the district sent letters to parents of students in three high schools it expected to land on the failing list, notifying them that the transfer option might be available for the next fall. During the summer of 2002, the district mailed a follow-up notice telling parents that the law provided transportation money for any students who wanted to leave those schools. Looking at test results in fall 2002, the district con-

cluded that an additional middle school was likely to fall onto the failing list for the 2003–2004 school year. Once again, it notified eligible parents and urged them to attend an annual school fair where they could learn more about the schools available for transfer.

Yet even with this ambitious effort—which far exceeds the outreach in the vast majority of cities—only about 140 parents sought transfers, says Lew Frederick, director of information at the Portland Public Schools. The reasons that so many parents decided to stay put, Frederick says, include: loyalty to neighborhood schools; reluctance to travel long distances; concern about how their children might be received in a new school; the already available opportunities to transfer under magnet programs; and a desire to gain access to the after-school tutoring services that are promised to students who remain in failing schools.

The record is clear that most districts could make it much easier, and more attractive, for parents to move their children from failing schools. But the factors suppressing participation in Portland—which appears to have made a good-faith effort to implement the program—suggest that there may be a natural limit to how many parents will move their children from one conventional public school to another. The experience in Dayton, and to some extent in Chicago, defines another limit on the current programs: in many places, the schools that students can transfer into may not be enough of an improvement on the schools they are leaving to make it worth the trouble.

Turf Battles

In the months ahead, the limitations of the choice provisions established under the federal education law are likely to drive the debate in two different directions. From the left may come

increasing demands that children in failing inner-city schools be guaranteed the right to transfer into neighboring suburban schools.

Faced with examples of suburban schools' refusing to take transfers, liberal education reformers are beginning to argue that suburban districts should be required to accept such children. In effect, they are using the logic of the education reform law to reopen one of the most divisive issues of the school desegregation era: whether largely white suburban districts should be required to accept black and Hispanic inner-city children. In the 1974 *Milliken v. Bradley* decision, the Supreme Court ruled that courts generally could not require busing across district lines to achieve racial balance; but the coming months may see more calls from liberals for moving kids across district lines to fulfill the promise of the federal law. "Choice within districts does not provide real opportunity to most of the students who need it," Goodwin Liu, a former education official in the Clinton administration, wrote recently, "The reality is that most high-performing public schools are located in the suburbs."

Conservatives take a different lesson from the disappointing results of the law's public school choice provisions. Many argue that the resistance from local public school bureaucracies shows that the only way to create genuine alternatives for children in weak schools is to provide them with private school vouchers. "There has never been more powerful evidence about the need for private school choice than the data that are coming out about public school choice," says Clint Bolick, vice president of the Institute for Justice, a conservative legal group. "In order to make the promise of No Child Left Behind meaningful, it's clear we have to look to every possible alternative, including private schools."

Some Bush administration officials are reaching the same

conclusion. Eventually, President Bush may use the bureaucratic resistance to public school choice to revive the proposal for private school vouchers that he dropped early in the negotiations over the education bill in 2001. "That's definitely something we have given a lot of thought to," said one senior official.

In the meantime, the administration is trying to nudge districts toward more enthusiastic implementation of the law. In October 2002, the federal Department of Education distributed nearly \$24 million in grants to Arkansas, Florida, Minnesota, and districts in six other states to expand their public school choice programs. More important, last fall the department also issued regulations announcing that districts could no longer use a lack of capacity as an excuse to deny transfers to students in failing schools. That alone will require many cities to intensify their efforts. "We know we are going to have to be much more aggressive next year," says Chicago's Hansen.

Whether that will be enough, in Chicago and elsewhere, to provide real opportunity for children trapped in failing schools remains very much in question. Liberals and conservatives may not agree on the cure, but both increasingly believe that the federal law's current approach to school choice is fatally flawed. The cool response to the transfer option in cities as different as Chicago and Portland suggests that, whatever choices are offered, many parents would rather see money and effort directed toward improving their neighborhood school. However, parents who want to vote with their feet (as Ronald Reagan once said) may need more opportunities than the federal reform law has provided so far.