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## IN NEED OF IMPROVEMENT: REVISING NCLB'S SCHOOL CHOICE PROVISION

By Erin Dillon

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In April 2004, nearly 500 public schools in Chicago, Illinois, were identified as “in need of improvement” under the federal No Child Left Behind Act (NCLB). As a result, 175,000 Chicago public school students became eligible to transfer to a higher-performing school within the district under a “public school choice” provision in NCLB that’s designed to provide an escape valve for students in chronically under-performing schools.<sup>1</sup>

But only 438 students, or less than 1 percent of eligible students, were able to take advantage of the transfer option.<sup>2</sup> And Chicago is not unique. NCLB regulations mandate that districts offer students in failing schools at least two options, but only a tiny fraction of eligible students nationwide have utilized NCLB’s school choice provision partly because they can’t find a spot in even one high-performing school in their district.<sup>3</sup>

To expand students’ options, NCLB encourages districts to establish interdistrict choice agreements “to the extent practicable” with neighboring school districts, allowing students to attend schools outside district boundaries. Yet few districts have instituted such agreements. As a result, some choice advocates have recommended that financial incentives be added to NCLB to encourage more school districts to embrace interdistrict choice.<sup>4</sup>

There are a number of steps that Congress and the next administration can take to improve the effectiveness of NCLB’s choice provision, and thus increase the number of high-quality public school options for students in low-performing schools and the likelihood that the students who need access to high-quality options the most will be served. Expanding interdistrict choice is one of those steps, but it will not, by itself, make school choice available to substantially more students within public education. Achieving that goal would require additional steps by lawmakers.

## Targeting Interdistrict Choice

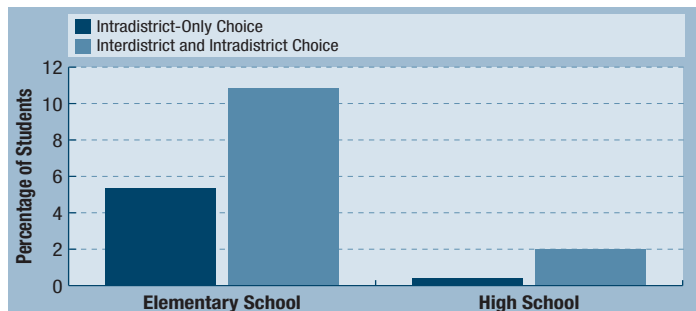
Interdistrict choice seems like a potentially winning strategy, particularly for students in lower-performing schools with nearby high-quality schools that are inaccessible because of school district boundaries. Yet, implementing interdistrict choice is more complicated

than just crossing district lines: There is a limit to how many students a school can accommodate; there is a geographical limit to how far students are able to travel to a new school and how far districts are willing to transport them; and the impact of interdistrict choice varies with the number of schools required by NCLB to offer choice (those labeled “in need of improvement”). As the number of such schools in a region increases, there is more competition for the limited amount of space available in higher-performing schools (those making “adequate yearly progress” or AYP).

The combination of these factors means that the potential of interdistrict choice will vary greatly from one community to the next. We examined NCLB school-performance data for all Chicago public schools and then modeled choice under an intradistrict-only choice policy (NCLB’s current mandate) and a combined intradistrict and interdistrict choice policy. Taking into account driving distances, school capacity, and competition from other lower-performing schools, we found that while interdistrict choice can expand Chicago students’ options, it will still only affect less than 11 percent of students in low-performing schools at the elementary school level and a mere 2 percent at the high school level.<sup>5</sup> (See Figure 1.) In a district the size of Chicago, these aren’t small numbers of students—over 20,000 students would have the option to transfer schools—but they still leave the large majority of students without choice.

This limited choice is partly due to geography—Chicago is bordered on one side by Lake Michigan, which limits the suburban areas into which students can transfer. But it is also due to a scarcity of nearby higher-performing schools and competition for space in those schools from the many lower-performing schools in Chicago, a scenario that is common in many large, urban districts. As such, in

**Figure 1. Chicago Students With the Potential to Transfer Under NCLB's Choice Provision**



Source: Author analysis of available choice within a 20-minute driving distance of schools labeled “in need of improvement.” Drive time calculated using Geographic Information Systems software. 2006–07 school performance data from the Illinois State Board of Education, available at: [http://www.isbe.net/research/htmls/report\\_card.htm](http://www.isbe.net/research/htmls/report_card.htm).

districts like Chicago, NCLB’s choice provision is unlikely to benefit most students, even if it is expanded to include interdistrict choice.

One solution is to create new high-performing schools within school districts. Chicago is currently building 100 new schools under its “Renaissance 2010” initiative. They include new traditional public schools, charter schools, and restructured lower-performing schools. And NCLB can boost such efforts by providing more resources and guidance to school districts to aid in turning around low-performing schools and replicating successful schools. This includes dedicating more federal funds to state efforts for school improvement and promoting information-sharing among states on effective methods for intervening in struggling schools.<sup>6</sup> The federal government can also help identify school models that have a track record of success in urban districts and provide resources to replicate them, including additional start-up funding for new schools or transition funding for schools interested in restructuring under a successful school model.

But lawmakers can also revise NCLB to increase the effectiveness of interdistrict choice in some areas, by reducing the competition among students for limited space in higher-performing schools. NCLB’s choice provision already requires school districts to “give priority to the lowest-achieving children from low-income families.”<sup>7</sup> Further targeting choice to students enrolled in the lowest-performing schools would decrease competition and could provide many of these students the option to transfer to a better-performing school.

Two changes to NCLB would reduce this competition. First, as some education policy experts have recommended, choice should only be required of the lowest-performing schools.<sup>8</sup> Limiting choice to only those schools that, for example, miss multiple targets under NCLB would focus resources on the schools most in need of intervention and would limit school choice to students in the lowest-performing schools.

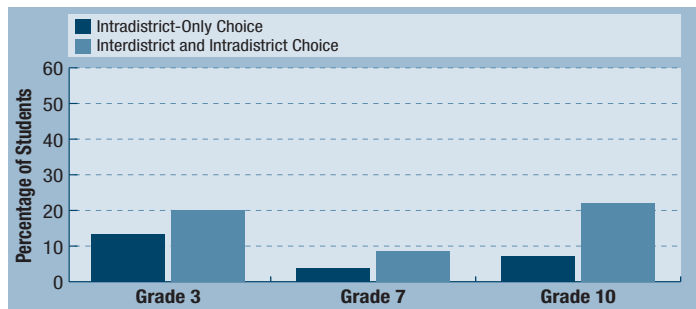
Secondly, policy experts, school districts, and states have argued that choice should be the second, not the first, consequence schools face under the NCLB timeline.<sup>9</sup> NCLB’s timeline currently requires schools that miss performance targets for two years to offer school choice to students in the third year and supplemental services in the fourth year if the school still misses its performance targets. Switching the order of consequences schools face under the NCLB timeline would allow schools to first offer students “supplemental education services,” or tutoring and academic support supplied primarily by private providers. This change, which was piloted in selected school districts and is now an option all states can apply for, would allow schools to utilize these additional academic resources to improve test scores and potentially avoid missing performance targets for a third year.

Both of these recommendations would reduce the number of schools that are required to offer choice, which in turn reduces competition for the limited number of seats in higher-performing schools and increases the percent of eligible students who can transfer.

Using California as an example, we looked at how many students would benefit from NCLB’s choice provision under three strategies: limiting it to intradistrict choice only; combining intradistrict and interdistrict choice; and targeting it to the lowest-performing schools. Because grade configurations vary widely among schools in California, we categorized schools as serving either grade 3, grade 7, or grade 10.

As Figure 2 shows, among schools serving grade 10, interdistrict choice triples the percent of students who could potentially transfer schools. Under an intradistrict-only choice policy, only 7 percent of students could potentially transfer schools, but adding interdistrict choice increases this to 22 percent. The increases are less substantial for schools serving grade 3 and grade

**Figure 2. California Students With the Potential to Transfer Under NCLB’s Choice Provision**



Source: Author analysis of available choice within a 20-minute driving distance of schools labeled “in need of improvement.” Drive time calculated using Geographic Information Systems software. 2006 California data from the California Department of Education, available at: <http://www.cde.ca.gov/ta/ac/ay/aypreports.asp>.

7. Among grade 3 schools, interdistrict choice increases the percent of students who can transfer from 13 percent to 20 percent. And among grade 7 schools, interdistrict choice results in a nearly 5 percent increase in students who have the option to transfer.

But as Figure 3 shows, further targeting choice to the lowest-performing schools substantially increases the percent of eligible students with the option to transfer schools—to nearly 60 percent among grade 3 schools and over 40 percent among grade 10 schools. By focusing on students in the lowest-performing schools, those that missed performance targets for three or more years and that met less than 80 percent of their performance targets in the third year, the choice provision would provide a valuable outlet for a substantial percent of students in the most troubled schools, giving these students an even better chance at finding a seat in a higher-performing school.

Targeting choice would also help to prevent increased academic and economic segregation by further ensuring that low-income and lower-performing students are given priority in choosing schools. Choice programs that do not give priority to these students risk increasing segregation, as the highest-performing students take advantage of the option to transfer schools.<sup>10</sup>

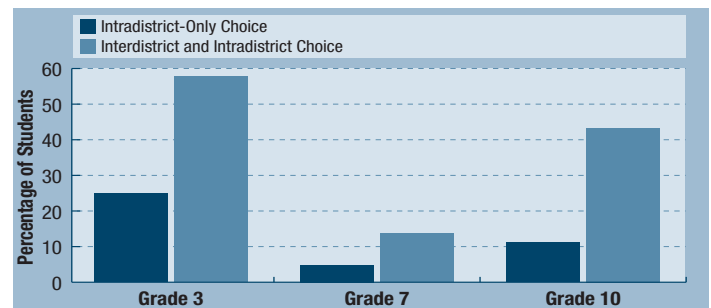
Still, in some cases, school choice just won’t be a viable option for a large percent of eligible students. The small amount of choice available for students in California schools serving grade 7, for instance, is due to the high percentage of students enrolled in schools required to offer choice—grade 7 schools have nearly a 1-to-1 ratio

of students enrolled in schools making AYP, to students enrolled in “in need of improvement” schools.<sup>11</sup> With this ratio, interdistrict choice cannot substantially increase the percent of students with the option to transfer schools. Even with targeting, the changes only increase the percent of students with the option to transfer by 5 percent, to just over 10 percent. Here, there are just too many schools identified as “in need of improvement” and too few higher-performing schools.

Targeting choice also has its risks, such as creating incentives for schools to push out a particular subgroup of low-performing students, such as English language learners or special education students. If NCLB mandates that schools offer choice only to the lowest-performing students, it might allow schools to improve test scores simply by transferring out their lowest-scoring students. And if schools aren’t at risk of losing their higher-achieving students, there may be little incentive to improve.

Improving parental notification of available school choices under NCLB would mitigate this risk. If all students and their families are informed of available choices and their right to transfer schools, it would be more difficult for schools to “push out” a particular subgroup. Research has shown that many districts are currently doing a poor job of informing students in low-performing schools of their options, which disadvantages low-income students who may not have access to information about the school choice provision.<sup>12</sup> Secretary of Education Margaret

**Figure 3. California Students With the Potential to Transfer Under NCLB’s Choice Provision, After Targeting\***



Source: Author analysis of available choice within a 20-minute driving distance of schools labeled “in need of improvement.” Drive time calculated using Geographic Information Systems software. 2006 California data from the California Department of Education, available at: <http://www.cde.ca.gov/ta/ac/ay/aypreports.asp>.

\*Schools in year two of school improvement and meeting less than 80 percent of performance targets.

Spellings recently proposed regulations to improve outreach about the school choice provision by requiring districts to provide timely notice to students and parents about their transfer option, allowing districts to use NCLB school choice funds for outreach activities, and requiring districts to publicly report on student participation in NCLB school choice.<sup>13</sup>

In addition to informing students and their families of their choices, NCLB should, as recommended in the report of the Aspen Commission on NCLB, require districts to have a third party audit the number of available seats in higher-performing schools.<sup>14</sup> This would ensure that choice is not artificially limited by under-reporting from higher-performing schools or districts. Auditing space alone, however, will not create a sufficient number of

seats in many districts. In these areas, incentives may be necessary to encourage increased intradistrict and interdistrict choice.

## Encouraging Participation

Either within their school district or in another district, students need higher-performing schools to transfer into. But under NCLB's current choice provision higher-performing schools face multiple disincentives to enrolling transferring students.

One of the primary reasons higher-performing schools are unlikely to accept many low-performing transfer

### Modeling Choice

We used Geographic Information Systems mapping technology to determine the number of higher-performing schools (schools making AYP) serving the same grade level located within a 20-minute driving radius of schools required to offer school choice under NCLB (schools labeled “in need of improvement”). We chose a 20-minute driving distance to represent the time most students spend commuting to school—according to data from the 2001 National Household Travel Survey, the average commute to school is 18 minutes. Since we were estimating the potential of choice to operate across states and districts and for more than a select number of students, we chose a commuting distance that would likely be considered reasonable to most parents. In addition, because the driving-time estimates do not take into account additional drive times due to rush-hour traffic or indirect bus routes, the 20-minute limit underestimates actual driving times.

We calculated the “space” available to each lower-performing school by first assuming that each higher-performing school could increase enrollment by 10 percent to accept transfer students, and then we calculated the number of “seats” yielded by increasing enrollment in the school by that percentage. For instance, if a higher-performing school had an enrollment of 100 students, and we assumed it could increase enrollment by 10 percent, that would yield 10 available seats. We determined 10 percent to be a realistic estimate of the seats available to students if robust incentives were used to encourage participation among higher-performing schools. The Aspen Commission on No Child Left Behind, an independent panel commissioned to evaluate NCLB and provide recommendations for its improvement, recommended that higher-performing schools be required to make 10 percent of their seats available for transferring students.

Once we determined the number of seats available at each higher-performing school, we counted the total number of

lower-performing schools within a 20-minute driving radius of the higher-performing school, and we divided the total “available seats” from the first step by that number to calculate a “seats per school” number for each higher-performing school. If the school mentioned above has five lower-performing schools within a 20-minute drive, then there are two seats available per lower-performing school.

Third, we calculated the total number of seats available to each low-performing school by summing the “available per-school seats” of all higher-performing schools that were a potential transfer site. Thus, if a lower-performing school were within the driving radius of the above mentioned higher-performing school, it would get two seats from that school. But if it were also within the driving radius of three other higher-performing schools, each with two per-school seats available, the lower-performing school would have a total of eight available seats.

Finally, after calculating the space available to each lower-performing school, we summarized the percent of students able to transfer schools by grade level. We calculated a weighted average to account for the variation in school size by summing the total seats available to all lower-performing schools within each grade level, and divided those totals by the total enrollment in those schools.

When calculating the seats available through intradistrict choice, we included all available within-district higher performing schools as potential options and also calculated competition for these seats from all other schools in the district that were required to offer school choice. When calculating interdistrict choice, we expanded the available options to include schools in other districts that were within the 20-minute driving radius, but also included competition from any schools—whether in the same district or in other districts—that were within a 20-minute drive of the higher performing school.

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students is that the schools will be penalized under NCLB for the lower test scores of incoming students. Even with a school's best efforts and with additional academic support, it could take multiple years for students to reach grade-level achievement, and in the meantime, schools are held accountable for students that score below proficient on state assessments.

To address this issue, NCLB can either give schools credit for the academic growth of transferring students, even if those students don't reach the proficiency cutoff, or give schools one to two years before they are held accountable for students transferring under the choice provision.<sup>15</sup> In states that have the ability to hold schools accountable for student growth—how much students improve from one year to the next—schools can be held accountable for getting students on track to reaching proficiency.

But in states without the ability to measure student growth, policymakers need a different option. In these states, schools should not be held accountable for the performance of transferring students for the first one or two years, giving them more time to get students to proficiency. The downside of this proposal is that it could keep a large number of students, and those that need improvement most, out of the accountability system. And these students may change schools regularly, meaning that they could be excluded from school accountability for several years. Providing schools with a “grace period” in which they are not held accountable for transferring students is a temporary solution to the disincentives schools face. Ultimately, a measure of student growth will be necessary to allow for both increased school choice and consistent accountability for all students' academic achievement.

Financial incentives are another important tool for increasing participation in choice among higher-performing schools, particularly those located in another school district. Allowing federal dollars to immediately follow low-performing students into their new schools is one strategy that could encourage higher-performing schools to accept transferring students. Current federal guidance does not require that federal funds “follow the child” to a new school, and depending on how school districts calculate school eligibility for federal money and allocate those funds, schools may not receive additional money for enrolling students transferring from high-

poverty schools.<sup>16</sup> This can serve as a disincentive to lower-poverty schools to enroll transferring students, particularly those students that may require specialized resources.

Also, higher-performing schools could receive financial bonuses for enrolling a certain number of students. The Aspen commission recommended that schools be required to make 10 percent of their seats available to transferring students. Mandating this type of participation across district boundaries could be politically difficult, but NCLB could include incentives to higher-performing schools that enroll a number of transferring students equivalent to 10 percent of their total enrollment.

Financial incentives, however, will require additional spending, or moving money out of low-performing schools into schools that are already higher performing, which runs counter to how NCLB's funds are intended to be distributed. Financial incentives may be necessary to expand the pool of good options for students, but policymakers should first carefully consider whether the financial incentives will substantially increase the number of seats available to students.

NCLB's choice provision could also do more to ensure that students receive the academic support they need when they enter a new school. Research on existing public school choice programs indicates that simply moving students into a higher-performing school is not sufficient for improving student achievement. Students, especially those already academically behind, need additional tutoring and academic supports to catch-up.<sup>17</sup>

Thus, NCLB should continue to provide supplemental services to these students to help them reach proficiency. Similarly, in cases where financial incentives are used to urge more participation among higher-performing schools, these funds should truly follow the student and be limited to the additional academic support, tutoring, and other activities needed to improve student achievement.

By targeting choice to the lowest-performing schools and students, offering incentives to encourage higher-performing schools to accept transferring students, and providing additional supports to students in their first years at a new school, we may begin to see more robust results from school choice under NCLB.

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## Endnotes

- <sup>1</sup> Erik Robelen, “Chicago Data Suggest Transfer Students Gain,” *Education Week*, May 5, 2004, and Ana Beatriz Cholo, “School Reform Pinch; Only 457 Spots Open for City Students to Transfer,” *Chicago Tribune*, April 23, 2004.
- <sup>2</sup> Tracy Dell’Angela, “School Transfer Slots Wasted,” *Chicago Tribune*, November 30, 2004.
- <sup>3</sup> Ron Zimmer, Brian Gill, Paula Razquin, Kevin Booker, and J.R. Lockwood, *State and Local Implementation of the No Child Left Behind Act* (Washington, DC: U.S. Department of Education, 2007).
- <sup>4</sup> Richard Kahlenberg, *Helping Children Move From Bad Schools to Good Ones*, Security and Opportunity Agenda, (Washington, DC: The Century Foundation, June 15, 2006).
- <sup>5</sup> We removed Chicago’s eight selective high schools from analysis because they are currently not considered transfer options for students in low-performing Chicago high schools.
- <sup>6</sup> For more recommendations on turning around low-performing schools under NCLB, see the Aspen Commission’s report, The Commission on No Child Left Behind, *Beyond NCLB: Fulfilling the Promise to Our Nation’s Children* (Washington, DC: The Aspen Institute, 2007). p. 94–99.
- <sup>7</sup> P.L. 107-110, Sec. 1116(b)(E)(ii).
- <sup>8</sup> See Frederick Hess and Chester Finn, *Leaving No Child Behind? Options for Kids in Failing Schools* (New York: Palgrave Macmillan, 2004), and Jimmy Kim and Gail Sunderman, *Does NCLB Provide Good Choices for Students in Low-Performing Schools?* (Cambridge, MA: The Civil Rights Project, February 2004).
- <sup>9</sup> See Lance Fusarelli, “Restricted Choices, Limited Options: Implementing Choice and Supplemental Educational Services in No Child Left Behind,” *Education Policy*, 21 (1), 2007, and Frederick Hess and Chester Finn, *Leaving No Child Behind? Options for Kids in Failing Schools*.
- <sup>10</sup> Erin Dillon, *Plotting School Choice: The Benefits and Limits of Crossing District Lines* (Washington, DC: Education Sector, August 2008).
- <sup>11</sup> In comparison, students in schools serving grade 3 and grade 10, for instance, have more options—the ratio of students in schools making AYP to students in schools required to offer choice is 2-to-1 and 3-to-1, respectively.
- <sup>12</sup> Cynthia Brown, *Choosing Better Schools: A Report on Student Transfers Under the No Child Left Behind Act* (Washington, DC: Citizens’ Commission on Civil Rights, May 2004).
- <sup>13</sup> U.S. Department of Education, *Strengthening Choice and Free Tutoring*, April 2008, available online at: <http://www.ed.gov/policy/elsec/reg/proposal/strengthening-choice.html>.
- <sup>14</sup> The Commission on No Child Left Behind, *Beyond NCLB: Fulfilling the Promise to Our Nation’s Children* (Washington, DC: The Aspen Institute, 2007).
- <sup>15</sup> For more on providing schools with a “grace period,” see Richard Kahlenberg, *Helping Children Move From Bad Schools to Good Ones*.
- <sup>16</sup> *No Child Left Behind Act Public School Choice Non-regulatory Guidance* (Washington, DC: U.S. Department of Education, February 6, 2004).
- <sup>17</sup> Erin Dillon, *Plotting School Choice: The Benefits and Limits of Crossing District Lines*.