



# 10

## False Promises

### *The School Choice Provisions in NCLB<sup>1</sup>*

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#### STRATIFICATION AND EQUALITY OF EDUCATIONAL OPPORTUNITY



Scholars have long debated the extent to which education enhances mobility chances or simply maintains existing patterns of inequality. On the one hand, social scientists have argued that mobility based on achievement, rather than status maintenance, is a hallmark of the U.S. social system (Blau and Duncan 1967). The U.S. educational system has been characterized as one with “contest,” rather than “sponsored” mobility. Unlike the British system, in which elites induct a select group of youth at an early age to groom them for high-status positions, youth in the United States compete in multiple contests, with every effort taken to keep students in the game (Turner 1960). Alternative views argue that through hidden curriculum and tracking, the U.S. system “cools out” the mobility aspirations of disadvantaged students, thereby reinforcing, rather than overturning, existing patterns of stratification (MacLeod 1995; Oakes 1985; Rosenbaum 1976).

If the United States is indeed characterized by mobility through achievement, one must consider the rules of the game. To establish the legitimacy of contest mobility regimes and maintain social control, participants must believe that differential outcomes, and the rewards that flow from these outcomes, are due not to differential access to the resources necessary to compete in the contest, but rather to effort and merit. In order for success in school to be viewed as an effective mechanism to attain the rights and privileges of high status, all students must have access to high-quality teachers, curricula, and schools.



Promoting equality of educational opportunity was a persistent goal of U.S. education policy throughout the 19th and 20th century. Expanding access has taken various forms over time: it has extended schooling in rural areas; ensured that immigrants attended common schools in urban areas; addressed school desegregation; and, as some have argued, expanded school choice. Though expansion of educational opportunity has been a hallmark of the U.S. system, structural inequality and entrenched power dynamics have made providing students with the same starting point a highly contentious area of public policy. Due to the relatively high level of inequality in American society and the decentralized nature of the educational system, efforts to use education policy to reduce inequality have faced political opposition and myriad difficulties in policy implementation. While there is often widespread agreement among the public and policymakers that students *should* receive equal access to education, implementing reform has often foundered on entrenched interests seeking to maintain their advantages (Hochschild and Scovronick 2003).

The expansion of school choice through vouchers, charter schools, and NCLB has been framed by advocates as a way to enhance equality of educational opportunity; critics claim that school choice would reduce, rather than increase, educational opportunities for disadvantaged students. The stakes of this debate have been raised now that school choice is being funded and encouraged through federal policy. The D.C. Opportunity Scholarship program, begun in the 2004–5 school year, currently serves about 1,700 students who each receive up to \$7,500 in federal funds to enable them to attend one of 68 private schools (about two-thirds of which are religiously affiliated) (Wolf et al. 2006). A policy that affects many more students and schools is the school choice provision in NCLB, which requires that students in schools that have failed to make adequate yearly progress (AYP) in consecutive years be given the option of transferring to a school that has done so. The implication of this provision is that because states and local school districts have failed to provide adequate access to educational resources to low-income children, the federal government must use its authority to regulate student enrollment policy.

In order to justify what has become a significant incursion of federal government power into educational policy since the original ESEA law was passed in 1965, the president and Congressional leaders sought to instill in the public and other members of Congress a sense that urgent reform was required to fix a dysfunctional educational system. The image of “freeing” students from “failing” schools was central in this effort. For example, upon introducing his educational agenda on January 23, 2001, President George W. Bush said: “American children must not be left in persistently dangerous or failing schools. When schools do not teach and will not change, parents and students must have other meaningful options.”<sup>22</sup>

Not surprisingly, the exertion of federal authority over student enrollment

policy has proved controversial and implementation of these provisions has been uneven across local school districts. In fact, one could argue that the school choice provisions have been remarkably ineffective. Despite the fact that 3.3 million students were eligible for NCLB transfers in the 2003–4 school year, only 31,500, or 1 percent of eligible students actually transferred to a school that was making AYP (U.S. Government Accountability Office 2004).

The purpose of this chapter is to assess the extent to which public school choice either through local or federal policy is likely to expand equality of educational opportunity. I begin by outlining some important design principles for school choice programs. I discuss the challenges local districts have faced when attempting to comply with the NCLB transfer mandates. I conclude by drawing implications for NCLB's 2007 reauthorization and for future research on NCLB choice.

### THE PROMISES AND PERILS OF SCHOOL CHOICE

The most common and least controversial policy of assigning students to schools is by geographic catchment area, with all students in a given set of neighborhoods going to the same neighborhood school. This policy is the norm in American education, in which local school district officials determine which students attend which schools through drawing attendance area boundaries. Neither parents nor school principals have much choice over enrollment decisions.<sup>3</sup> School choice advocates criticize this type of school enrollment policy for creating monopolistic conditions in which students are essentially a captive clientele. This view holds that these monopolistic conditions stifle both diversity of educational approach and educational excellence. In 2003, about 74 percent of students in grades 1–12 attend an assigned public school (Wirt et al. 2004). Ten years previously, in 1993, about 80 percent of students attended an assigned neighborhood school, one indication of the erosion of support for assigned public schools through the 1990s and early 2000s.

School choice advocates seek to replace the neighborhood-based school with a wide variety of schools tailored to fit the needs and interests of various student groups. Advocates argue that school choice can help parents both find a school that better fits their child's educational needs and potentially leverage school reform by promoting competition among schools for students. For example, a cultural divide between teachers and poor parents has been identified as a barrier to school improvement (Comer 1988; Lareau 1989). A goal of school choice policy, therefore, is to bridge this divide by allowing schools to recruit parents aligned with their educational approaches. This should promote parent satisfaction and trust if teachers and administrators adhere to these approaches and serve the needs of the students (Bryk and Schneider 2002). Moreover, some have argued that schools in which educational values are aligned among staff,

parents, and students may produce more functional learning communities (Bryk et al. 1993; Coleman and Hoffer 1987;). Therefore, choice has the potential to raise parent satisfaction, student engagement, and improve the incentives that influence school leaders.

Choice, if paired with deregulation of curricular foci, could promote a better match between family values and school mission. Promoting innovation of educational approach increases the likelihood of a match between student and family interests and a school's educational approach. If one assumes that the needs of students and families vary too much to be served by one type of school, a goal of school choice policy is to subvert the common school ideal, which promotes a unitary conception of educational values. In its place, choice policy promotes a wide variety of schools, each tailored to a particular conception of educational values, with the ability to attract students and families based on shared values: the "interests of children are best served in a decentralized polity giving maximum scope to free, chosen, communal relationships that are generally organized on a small scale" (Coons and Sugarman 1978, 2). School choice advocates have argued that it is not the state's place to enforce conformity to one set of values: "Our problem today is not to enforce conformity; it is rather that we are threatened with an excess of conformity. Our problem is to foster diversity, and the alternative [vouchers] would do this far more effectively than a nationalized system" (Friedman 1962, 97).

Education organized around a plurality of value commitments raises the possibility that school choice might harm social cohesion. While some voucher proponents have advocated reforms to create a system of pluralistic value competition—education as a "marketplace of ideas" (Coons and Sugarman 1978, 102)—the fact that education is a public good paid for by tax dollars makes political contestation over curricular content inevitable. As controversies over the teaching of evolution suggest, matters of curriculum involve deeply held value commitments. Because schools are one of society's most important institutions of socialization and national identity, school curricula are fiercely contested.

From an egalitarian standpoint, therefore, school choice is problematic because it threatens the common school ideal of educating children of many different social, racial, and achievement backgrounds in the same institution. It has been argued that the common school has benefits for social cohesion and perhaps even peer effects on test scores if low ability and high-ability students share classrooms. Therefore, allowing students to exercise school choice to attend schools that better suit their values, racial/ethnic preferences, or abilities, would harm social cohesion and may have negative spill-over effects on the students who remain in neighborhood schools. Expanding school choice could promote "creaming" (i.e., more advantaged students would be more likely to take advantage of school choice and leave less advantaged students in failing schools). Given that the social isolation of disadvantaged groups has been shown to harm student

outcomes, one could predict that school choice could increase inequality in test scores, college enrollment rates, and incomes over time.

From a meritocratic standpoint, on the other hand, school choice could promote equity. The fact that highly motivated parents and children are able to gain access to alternatives to their neighborhood schools can be viewed as unproblematic assuming the admission rules are fair. In other words, in its ideal form school choice replaces the current system of school stratification based on race and class with one governed by merit, measured by test scores, effort, grades, or some other criteria. This could improve the incentives for families to seek out schools that serve their interests and for schools to attract and hold students who place a high-value on learning (Coleman 1992). Therefore, access to high-ability peers becomes a result of a fair process rather than some combination of ascriptive characteristics.

While my characterizations of these two divergent viewpoints may be roughly hewn, these perspectives are critical to understanding whether expanding school choice will increase or decrease social inequality through changes in access to educational opportunities.

As we might expect from the decentralized educational system in the United States, choice policy varies somewhat across the country. Most areas of the country allow some degree of choice within school districts, most states allow charter schools, and vouchers are quite rare. NCLB choice, which has largely been implemented within (rather than across) school districts, can be viewed as a form of intradistrict choice that has been mandated by the federal government onto local school districts.

## NCLB CHOICE IMPLEMENTATION

I begin my discussion of NCLB choice implementation by first discussing the legal and regulatory framework of NCLB and providing a nationwide overview of the difficulties school districts have had with implementing the transfer provisions of the Act. Following this, I describe in some detail what is known about Chicago's implementation of the transfer provisions. To place Chicago's compliance with federal mandates into perspective, I draw on research I conducted on the history and current operation of school choice programs in Chicago (Lauen 2006).

### *The Legal and Regulatory Framework of NCLB Choice*

NCLB choice is a form of intradistrict choice mandated by federal law and implemented by local school districts. The NCLB school transfer provisions, which only apply to schools receiving Title I funds, are designed as a negative incentive for underperforming schools. They are triggered when a high-poverty school fails to make "adequate yearly progress" (AYP) for two years in a row.

AYP applies to standards set by states (and subject to the approval of the U.S. Department of Education) in reading and math. AYP describes an improvement trajectory leading to 100 percent proficiency in both subjects for all students by the 2013–14 school year, measured by testing results from students in grades 3–8. A school can be judged as not making adequate yearly progress for failing to meet performance targets or for failing to test 95 percent of their students. In addition, schools can miss AYP for not testing at least 95 percent of students in a number of subgroups—major ethnic/racial groups, the economically disadvantaged, limited English proficient students, and students with disabilities—or if the average subgroup score fails meet a certain threshold.<sup>4</sup> If a school fails to make AYP in two consecutive years, it must offer students the opportunity to attend another public school in the same district or one nearby that is making AYP.<sup>5</sup> A school forced to provide NCLB transfers must do so until it succeeds in meeting AYP in two consecutive years. Students who transfer to a receiving school must be allowed to stay through the highest grade offered in the school. In implementing school transfer policies, the Act requires that local school districts (LEAs) give low-income and low-achieving students priority in school transfers in the event that not enough spaces in eligible schools are available.

Based in part on comments regarding regulation and additional questions to the U.S. Department of Education, in February of 2004 the department provided additional guidance to states attempting to implement the laws requirements (U.S. Department of Education, 2004). While additional funding would provide a positive incentive for schools receiving NCLB transfer students, the law does not require Title I funds to “follow the child.”<sup>6</sup> LEAs must spend an amount equal to 20 percent of its Title I allocation on choice-related transportation or tutoring, with no less than 5 percent of this allocation going to either transportation or tutoring. LEAs may delimit student transfer options to designated transportation zones to reduce costs. However, LEAs are not required to provide transportation to students whose original school is no longer in improvement status.

LEAs are not required to change admission requirements in schools with specialized missions (like arts magnets, science and math academies, and selective enrollment schools) even if these schools are the only ones identified by the district as eligible to receive transfers. They may, however, give NCLB transfer students priority in charter school lotteries. LEAs must not use lack of capacity to deny students the transfer option, but may take capacity under consideration in deciding which choices to make available. LEAs with a lack of capacity must create new capacity for NCLB transfers by building new classroom space, erecting portables, building new schools, starting charter schools, developing distance learning programs, sending students to another school district, or contracting with private schools. Finally, LEAs subject to desegregation orders are not exempt from the NCLB transfer provisions. They must attempt to comply with both the dictates of the order and the transfer provisions.

### *Nationwide Overview*

The NCLB transfer provisions have been called among the hardest provisions in the Act for local school districts to implement (Casserly 2004). They require districts to identify schools that have failed to make AYP for two consecutive years; identify schools that are both eligible to accept transfers under the Act and have the space available for student transfers; notify parents of their eligibility for a school choice transfer; set up a selection process to assign students to schools in the event that more students apply for transfers than can be accommodated; and provide transportation for transferring students. In some districts, this process is relatively straightforward and involves very few students. Three cities in Texas, for example, Houston, Dallas, and Austin, had no schools that were in “school improvement” status in 2003–4,<sup>7</sup> so these districts did not have to create a transfer process. Philadelphia, on the other hand, had 74 percent of the schools in improvement status, and was forced by NCLB to set up elaborate transfer program (Casserly 2004).

Nationwide, about 1 percent of eligible students in both the 2003–4 and 2004–5 school years actually switched schools through NCLB choice (Center for Education Policy 2005; U.S. Government Accountability Office 2004). About 15 percent of school districts had schools designated to offer NCLB transfers in 2004–5, and large urban districts tended to have more schools facing this sanction (Center for Education Policy 2005). In large urban districts, NCLB transfers have been a small but rising percentage of the overall student population. These figures are based on a survey of the 50 largest urban districts in 2003–4, 44,373, or 3.8 percent of eligible students who requested a NCLB transfer (Casserly 2004). Of these requests, 17,879, or 40.3 percent, were granted. For comparison purposes, the number of NCLB transfer requests granted by these large urban districts in 2002–3 was 5,661 (Casserly 2004).

According to a survey of state and school district officials, finding enough space in schools meeting AYP to satisfy requests, identifying eligible families in a timely manner, and communicating with parents were the most challenging barriers to implementing the choice provisions (Center for Education Policy 2005). Capacity constraints were particularly severe in some rural districts with only one school and in overcrowded urban districts where large proportions of schools were in improvement status. Interdistrict choice is a potential solution to this problem, but virtually no districts have been willing or able to create cross-district agreements to allow interdistrict NCLB transfers (Brown 2004).

Notifying families of their options in a timely manner has been a particular challenge due to testing, data cleaning, and reporting schedules. Given the high stakes attached to testing results, the complex NCLB achievement and testing participation criteria for each subgroup, and recent scandals involving mistakes in test scoring (e.g., Duchesne, 2000), states must carefully scrutinize student,

subgroup, and school test scores to ensure accuracy. While NCLB has increased the demand for accuracy, there has been a concurrent demand for results to be processed more rapidly. To ensure that testing results reflect what students have learned in a school year, students are typically tested as late in the spring as possible. Providing adequate notification to families eligible for NCLB transfers, however, requires results to be processed in a matter of months, before the next school year. This presents problems for most school districts. According to a survey of large urban districts, no district had testing results processed by the end of the 2002–3 school year, and more than half did not have results by the beginning of the next school year (Casserly 2004).

Lack of adequate notification is one barrier that contributes to the broader challenge of parent participation in the NCLB transfer program. While NCLB is designed to serve disadvantaged families, it is precisely these families that are the least likely to know whether they are eligible for a transfer. A survey in Massachusetts found that most parents whose children qualify for an NCLB transfer do not know whether their child's school is in improvement status and is thus required to offer their child a transfer. Specifically, only one in four parents of eligible children correctly identified the improvement status of their school (Howell 2004).

Evidence suggests that uptake for NCLB transfers has been low because parents have strong commitments to local schools and may be getting conflicting signals from the overlapping federal, state, and district accountability regimes. Opinion surveys consistently indicate that public school parents think highly of the schools their children attend, but not highly of schools in general. For example, in 2004 more than two-thirds of public school parents gave the school their oldest child attends a grade of "A" or a "B." Less than one-quarter of public school parents, however, gave public schools in the nation as a whole a grade of "A" or "B" (Rose and Gallup 2004). This suggests that parents might be willing to support efforts like those called for in NCLB to reform schools in general, but may resist efforts to punish or reform their own child's school. Despite high levels of parent satisfaction among those whose children attend schools of choice (Gill 2001, 128–37), most parents prefer reforming the existing school system to creating expanding school choice. Poll figures suggest that even if their child's school was in NCLB improvement status, only a small minority of parents would opt to exercise school choice. The vast majority (85%) of parents preferred that instead of choice, additional efforts should be made to improve their neighborhood school (Gill 2001).<sup>8</sup>

Some evidence also suggests that parents do not believe that the alternatives to their home school are markedly better. In some cases, this is understandable because state and federal quality designations sometimes vary. In some cases, states may recognize a school as being a school of excellence, but because of the underperformance of one subgroup, or because of the test participation rate

of a particular subgroup, the school may miss AYP standards. In other cases, it may be that districts identify schools as NCLB transfer options that are only marginally better than the sending schools themselves.

Scholars have questioned the effectiveness of relying on an accountability program that can lead to an overly broad definition of school failure. In other words, if large majorities of schools are deemed to be “failures” by NCLB rules, then the stigmatizing effect of the label may be limited. If, however, only a small proportion of schools are deemed as failing to meet a more relaxed set of standards, then arguably the stigmatizing effect would be more likely to lead to productivity improvements. For example, in 2003 75 percent of Florida’s elementary schools were deemed as failing to meet AYP, whereas only 10 percent of schools in 2002 received failing marks under the state’s A++ accountability plan (which, as noted above, offered vouchers to students in failing schools) (West and Peterson 2006). A study of Florida’s A++ program found that schools facing, or at risk of facing, the voucher threat produced positive impacts on school performance; schools at risk of facing sanctions through NCLB, however, did not produce similar effects (West and Peterson 2006). This provides some evidence in support of the hypothesis that targeted sanctions work better than overly broad ones. Further study is needed to determine the extent to which (1) the proportion of schools facing a sanction; (2) the type of choice offered (public versus private); or (3) the extent of state and local commitment to providing teeth to negative sanctions through policy implementation are the most effective at bringing about school improvement through stigmatization and negative sanctions.

In summary, the low NCLB transfer rates stem from several sources: (1) capacity constraints; (2) the logistical hurdles inherent in meeting both annual testing and notification requirements; (3) strong commitment to local schools; (4) race and class disparities in access to information about school quality; and (5) the fact that federal and state accountability regimes send conflicting signals about the quality of local schools.

In summary, the NCLB choice provision is explicitly linked to school accountability, it requires LEAs to use Title I funds for transportation, and forbids overcrowding from preventing student transfers. To provide more institutional detail and a sense of how policy implementation can evolve over time, I now turn to a more in-depth examination of one case.

### CHICAGO CASE STUDY

Chicago is a highly segregated city with a predominantly low income and minority student population. Its schools were once decried by William Bennett (former Secretary of Education under President Reagan) as the “worst in the nation” (Johnson 1987). While some strides have been made to reform schools and improve student achievement, large numbers of the city’s schools remain on

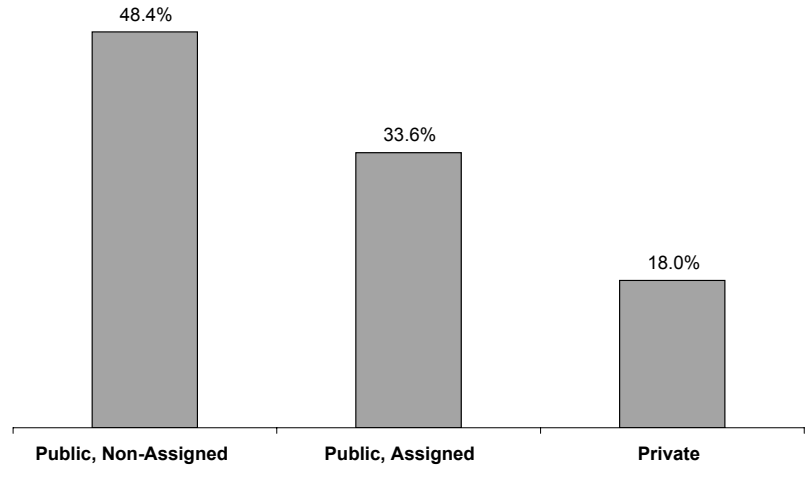


Figure 10.1 Chicago secondary school enrollment, by school type, 2000. *Note:* Data on private school enrollment is from author calculations of 2000 IPUMS data. Data on nonneighborhood public school enrollment is from author calculations of CPS administrative data.

academic probation and are deemed to be underperforming by local and federal standards. The District is currently identified by NCLB as being in “improvement” status for failing to meet goals in math.

Chicago has a large intradistrict high-school choice program in which public or private school choice is the norm. About half of secondary students exercise public school choice and almost one-fifth attend a private high school (see Figure 10.1). Public alternatives include career academies, selective enrollment college preparatory high schools, magnet schools and programs, charter schools, and military academies; private alternatives are predominantly Catholic schools. Only about one-third of secondary students in Chicago attend an assigned public school. The district also runs a liberal open enrollment transfer program which allows high-school students to attend any high school in the district on a space-available basis.

### *The Emergence of School Choice from Desegregation*

Chicago’s history with school choice began as a response to the problem of school segregation. Though Chicago formally desegregated its school system in 1874, due to real estate practices, public housing policy that situated projects in black neighborhoods, and a neighborhood schools policy, Chicago’s schools were segregated de facto (Hess 1984). Despite calls for action from community groups, policy recommendations in reports by academic experts, student boycotts, and the constant threats of federal civil rights enforcement, the Chicago school board

refused to implement any substantial school desegregation policy between 1960 and 1980 (Peterson 1976). Unlike in the South, where National Guard troops escorted black students through the hallways of Little Rock High School, the federal role in enforcing civil rights in Chicago was minimal. After passage of the Civil Rights Act in 1964, Chicago became an early test case in enforcement of the Act's provisions. When the Office of Education withheld federal education funds from Chicago due to the board's inaction on school integration, Mayor Daley complained to President Johnson, who quickly intervened on Chicago's behalf. The funds were quickly released (Hess 1984; Peterson 1976). Johnson's intervention set a precedent. At least in key Democratic strongholds like Chicago and other northern cities, the federal role in enforcement would be an empty threat until 1980, the turning point for both the history of desegregation and school choice in Chicago.

To avoid a federal lawsuit, in 1980 the District negotiated a consent decree with the U.S. Department of Justice to create a voluntary transfer program called "Options for Knowledge" to entice students away from segregated schools. Creating and maintaining integrated schools was a central goal of this program, so transfer requests were evaluated to determine the impact of a student transfer on the racial composition of the sending and receiving schools. Applications to schools under this program were sorted by grade, race, and gender. Students were chosen by lottery if schools or programs were oversubscribed. The plan established a standard to guide student reassignment and transfers: if a school was more than 70 percent of one race or ethnicity, then it was considered segregated and was subject to student reassignment policies including boundary changes and racial/ethnic quotas on incoming student transfers. Therefore, what emerged in Chicago was a program that sought to expand school choice, while also regulating schools' racial mix.

#### *Mayoral Takeover and a Turn Towards Selectivity*

During the mid- to late 1990s, Mayor Richard M. Daley, Jr. used authority granted to him by a school reform law in 1995 to close chronically underperforming schools and open new schools.<sup>9</sup> In Chicago and other cities during the 1990s, professional discretion and union control gave way to a business-led movement to give authority to big city mayors who then hired technocrats, businessmen, and military leaders to run schools. The reform act was passed by a Republican legislature and informed by extensive input from Chicago United and the Civic Committee of the Commercial Club, both influential Chicago-based business organizations (Klonsky 1995). The mayor, and Paul Vallas, the mayor's former budget director (who was himself not a professional educator) tightened accountability for both students and schools. They put an end to social promotion, the practice of promoting students from one grade to the next whether or not

students performed at grade level on standardized tests. In 1997, for example, 11,000 students were retained in the 3rd, 6th, and 8th grades due to poor performance on standardized tests in reading and math (Roderick et al. 1999). Vallas also used his expanded authority to use standardized test scores as a basis for evaluating schools and closing them for chronic underperformance.

Neighborhood schools, which had not fared well under the “Options for Knowledge” program, were further stigmatized by rising academic standards. One study found that schools on probation for low test score performance lost the highest proportion of their attendance area student enrollment to schools of choice (Duffrin 2001). As neighborhood high schools gained poor reputations, families with the information and ability to negotiate the school choice process (or pay for private schooling) sent their children elsewhere. Those students who had fewer options or special needs became disproportionately represented in neighborhood high schools. In South Shore High School, once a school with a good reputation in an integrated middle-class neighborhood, for example, a reporter found that a typical classroom of 28 students had 10 to 12 students with learning disabilities or behavior disorders (Duffrin 2001).

Given the poor reputation of many neighborhood schools in Chicago, the Daley regime sought to close dysfunctional schools, open new schools in their place, and build new school buildings. Between 1995 and 2004, 22 schools were closed and 53 schools opened. Of those that opened, only 16 had attendance areas, and 37 were schools of choice such as charters, magnets, and selective enrollment high schools. One objective in creating these new schools was to change the image of the Chicago public schools from one of fraud, mismanagement, and failure to one of performance and innovation. Daley and Vallas sought to keep more middle-class families in the city and attract students from the private sector to the district’s selective enrollment schools and programs. The administration built eight new selective enrollment high schools, expanded International Baccalaureate programs (a selective high-school program leading to a high-school diploma set to a worldwide standard), and created math/science/technology academies in schools with large outflows of attendance area students. In addition, the school district created fee-based preschool programs and neighborhood set-asides in gentrifying neighborhoods in an effort to entice young professionals to consider sending their children to the public schools.<sup>10</sup>

### *Features of the Existing System*

Several features of Chicago’s existing school choice regime are worth noting before exploring the District’s implementation of the NCLB transfer provisions. At least in part because most high schools have an application process to admit some or all of their students, students with social and academic advantages are more likely to participate in public school choice programs in Chicago.

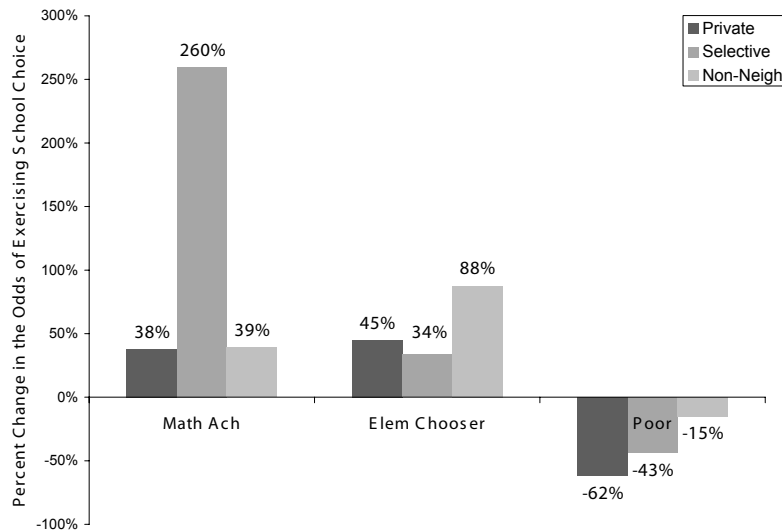


Figure 10.2 Effect of measures of student social and academic status on high-school choice, 2000. *Source:* Lauen (2006). 2000–2001 Chicago public schools administrative data. 9th grade destinations of 8th grade public school students only. Effects shown control for gender, race-ethnicity, special education status, age, number of previous school moves, and measures of elementary school context.

Students with higher prior achievement, and students with parents who had successfully negotiated the elementary school choice process, are more likely to attend a private or public alternative to their assigned public high school (Figure 10.2). Poor students (measured by whether the student was eligible for a free or reduced priced lunch), on the other hand, are less likely to exercise private or public high-school choice.<sup>11</sup>

There is also evidence that, consistent with prior research (Glazerman 1998; Saporito and Lareau 1999; Schneider and Buckley 2002), parents in Chicago choose schools based on race. Net of assigned high-school average achievement, nonblack families tend to avoid neighborhood high schools with high percentages of black students (Figure 10.3). This suggests that high-minority schools, no matter how productive, may be at a disadvantage in Chicago's system of school choice.

Ideally, we would like to be able to separate parent racial and class preferences from their preferences for high-performing schools. It could be that parents assume that schools serving disadvantaged student populations are of low quality. The evidence from Chicago is that parents prefer high schools with high-compositional quality, defined as a composite of aggregate achievement, safety, mobility, poverty, motivation, and attainment measures. (These school-level measures are all highly correlated.) The evidence also suggests, however, that parents are also likely to avoid enrolling their children in highly productive

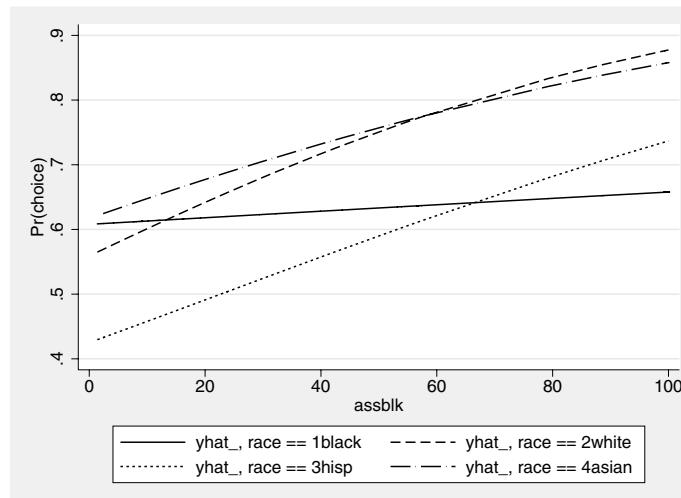


Figure 10.3 Effect of percentage black students on propensity to exercise school choice, by race-ethnicity, 2000. *Source:* Lauen (2006). 2000–2001 Chicago public schools administrative data. 8th grade public school students only. Effects shown control for student-level covariates such as prior achievement, poverty, and race-ethnicity, and neighborhood high-school average achievement.

assigned high schools. This could be because parents are unaware that, controlling for student background, prior educational experiences, and elementary school quality, disadvantaged high schools in Chicago tend to produce higher 8th to 9th grade test score gains.<sup>12</sup> Figure 10.4 displays the opposite effects of compositional quality and productivity.

In summary, Chicago's existing system of school choice emerged from school desegregation. At first, policymakers focused on expanding educational opportunities for black students in segregated schools. After a mayoral takeover of the school system in the mid-1990s, however, the focus of school choice policy shifted somewhat to expand educational opportunities for high-achieving students. By the year 2000, choice of high school in Chicago was designed as a “winner-take-all” system, with high-achieving students receiving a disproportionate share of the benefits of school choice (Lauen 2006). There is evidence to support the hypothesis that parents are sensitive to school quality differences; unfortunately, whether due to lack of access to school quality information or due to assumptions that schools serving disadvantaged students are of low quality, families seem to be avoiding schools with relatively high-productivity levels.

### *Chicago and NCLB Choice*

Elected and appointed officials have been openly critical of NCLB and the transfer provisions. Mayor Daley has been quoted as arguing that NCLB should have given

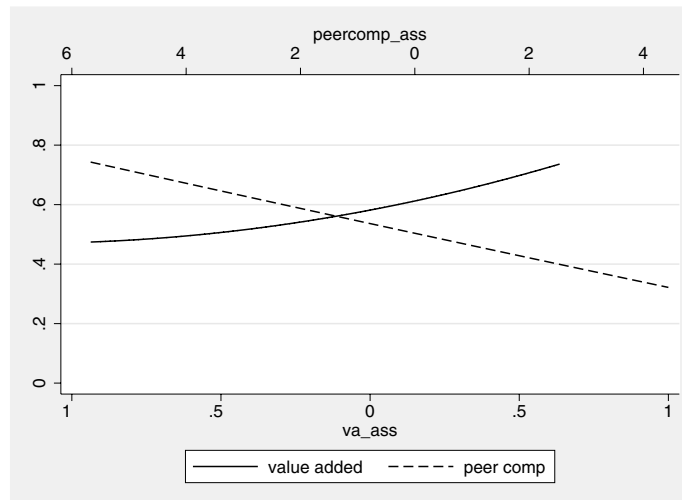


Figure 10.4 Effect of assigned school peer composition and productivity on propensity to exercise school choice, by poverty level, 2000. *Source:* Lauen .2006. 2000–2001 Chicago public schools administrative data. 8th grade public school students only. Effects shown control for student-level covariates such as prior achievement, poverty, and race-ethnicity. Peer composition is a principal components measure of assigned high-school characteristics such as percent poor, mobility rate, and average achievement. Productivity is defined as the average residual 8th to 9th grade test score gain, controlling for student background and elementary school quality.

schools more time to improve before they were subject to the transfer threat: “it’s ‘ridiculous’ to think schools can improve ‘overnight....Many of the schools are not performing. Everybody knows that,’ Daley said. ‘We know it. Where are you going to go? To another non-performing school? You can’t.’” (Rossi and Spielman 2002). Arne Duncan, the CEO of the Chicago Public School system (CPS), has expressed doubt that NCLB would improve student learning and was “burdensome...complex and impractical” (Rossi 2003b).

The U.S. Department of Education official responsible for overseeing the transfer provisions of NCLB, Nina Reece, said, “Based on every single news report and discussion we’ve had with the city of Chicago, we feel, when it comes to choice, they are not looking at creative ways to extend capacity and meet the needs of students in low-performing schools” (Rossi 2003a). Two options for complying with federal mandates include providing trailers for students on the grounds of schools making AYP and creating interdistrict agreements for transfers across district lines. Duncan has been quoted as saying that CPS has no funds to purchase trailers and that he hasn’t asked neighboring districts to accept CPS transfers because, “I don’t think yellow school buses from Chicago would be well-received” (Rossi 2003a).

From these exchanges in the newspapers, it seems fair to characterize the attitude of important elected and appointed officials as being hostile to the transfer

provisions of NCLB. This is perhaps understandable given that the federal share of funding is low, federal requirements under NCLB are extensive, and that NCLB labels large portions of Chicago's schools as in need of improvement, a problem that policymakers had been attempting to address in various ways for at least the past 10 to 15 years.

According to data provided by the Illinois State School Board, in the 2003–4 school year, three-quarters of elementary schools and 90 percent of high-schools failed to make AYP. In subsequent years, the proportion of elementary schools failing to make AYP fell to two-thirds; the high-school proportion fell and then increased to 94 percent (Table 10.1). By the 2005–6 school year, 64 percent of elementary school students and 94 percent of high-school students attended schools that failed to make AYP according to federal guidelines. Approximately 256,000 students were eligible by federal regulation to transfer to a school making AYP in 2005–6.<sup>13</sup> In a district with approximately 436,000 students enrolled in the fall of 2005 eligible for a transfer under NCLB, it is clear that CPS faces implementation problems; short of shutting down all schools that missed AYP, it is impossible for the district to find spaces for all students eligible for an NCLB transfer under federal guidelines.

For 2003–4, the first year of NCLB choice implementation, CPS determined that 1,100 spaces would be made available by lottery to eligible students, which for this year was determined to be 270,000 students. Approximately 19,000 students entered the lottery. Lottery winners were given one day to decide whether

TABLE 10.1 Selected NCLB statistics, Chicago, 2003–6

	School Year		
	03-04	04-05	05-06
Panel A, Federal definitions			
Elementary			
% of schools that failed AYP	75%	65%	64%
% of students in schools that failed AYP	80%	70%	64%
High School			
% of schools that failed AYP	90%	84%	92%
% of students in schools that failed AYP	90%	84%	94%
Panel B, Chicago implementation of NCLB transfers			
Eligible students (as defined by CPS)	270,757	2,500	1,100
Applications	19,246	5,933	267
Spaces made available	1,100	440	550

*Source:* Percent of schools failing AYP from author calculations of data provided by the Illinois State Board of Education. Chicago implementation of choice transfer policy from newspaper reports, e-mail communication with CPS officials, and Center on Education policy reports (Center for Education Policy, 2005, 2006).

to accept a choice seat (Rossi 2003b). For the 2004–5 school year, CPS changed eligibility rules and determined that about 2,500 students were eligible for 440 slots. About 5,933 students applied for these slots (Center for Education Policy 2006). It is clear that the decline in the number of students eligible for a choice transfer was due not to a large decline in the number of schools subject to the choice sanction, but to a redefinition of eligibility by local officials. In 2005–6, the definition of eligibility was further restricted to students in three schools that both missed AYP and had been identified for closure under the CPS accountability regime; 550 slots were made available to students in these three schools, but only 267 students applied for an NCLB transfer to one of 20 schools that were making AYP.<sup>14</sup> This left more than 800 students who chose to attend schools in neighborhoods adjacent to their old schools, none of which were making AYP (Grossman 2005). The number of students applying for NCLB transfers has been falling (Table 10.1). No high-school students were given the opportunity to exercise NCLB choice during the 2004–5 and 2005–6 school years.

In addition to capacity constraints, CPS has had difficulty identifying schools that were significantly better than those subject to the choice sanction. Students in Chicago could only choose from schools that had, on average, very high poverty levels. The average proficiency level of the receiving schools in Chicago, while generally higher than the sending schools, was significantly below the average proficiency level of the pool of potential receiving schools (Kim and Sunderman 2004). Of the 11 schools slated to be receiving schools of students affected by school closures in the spring of 2002, however, six were identified as needing improvement and eligible for choice in the fall of 2002 (Rossi and Spielman 2002). In some cases, receiving schools had worse test scores than some of the sending schools (Rossi 2003b). In at least one case, this was the case because the receiving school had not been in existence long enough to be subject to the choice sanction.

Illinois state law prevents local school districts from complying with some federal mandates. Though federal regulations state that local school districts must allow NCLB transfers even to overcrowded schools, Illinois state law forbids such an action. State law also prevents NCLB transfer students from taking precedence in admissions to academically selective schools (Center for Education Policy 2006).

In summary, Chicago is a large and diverse urban school system that has been struggling for many years to improve student learning. NCLB choice is but a small portion of the choice transfers that exist in a district in which 30 percent of elementary school students and 60 percent of public school students attend a public school of choice. Despite the fact that NCLB was perhaps designed with school districts like Chicago in mind, the ability of federal officials to force compliance with the law's dictates has been limited. For four years local officials have been largely free to craft policies that severely constrain the number of

NCLB transfer slots and limit the pool of eligible students that has little, if any, resemblance to federal regulations.

### IMPLICATIONS FOR REAUTHORIZATION

Rather than encouraging the rise of new school forms that could expand educational opportunity, the NCLB transfer provisions are a blunt system of negative sanctions. Without careful attention to mid-course modifications informed by additional research in exactly how school choice leads to benefits to students, NCLB choice is likely to hold an empty promise to American school children.

To be most effective, school choice policy must encourage innovation, reform, and productivity while also promoting (or at least not harming) social cohesion, accountability, and equity (Levin 2004; National Working Commission on Choice in K–12 Education 2003). Policy aimed at promoting a diverse array of educational options must, therefore, regulate enough to maintain social cohesion and ensure that public dollars are being put to productive use, but not so much that schools cannot innovate, take risks, and reach populations aligned with their mission. If enough new (or reconstituted) schools enter the market, policy must also create a level playing field to foster competition between new entrants and existing schools (National Working Commission on Choice in K–12 Education 2003). This involves providing both new and old schools with adequate and equitable funding, budgetary control, and the flexibility to hire and fire teachers aligned with reform objectives. The goal of policy would be to allow teachers and families to focus on a shared mission and the technical core of education—teaching and learning—while also fostering competition among educational providers and ensuring quality standards.

In short, the state must use its powers at the federal, state, and local levels to ensure innovation and competition in education while also holding schools accountable, promoting social cohesion, and protecting the rights of students to gain equal access to educational opportunity. Some of these powers include: maintaining an adequate and equitable flow of funding to schools; providing or paying for transportation to schools that are outside a student's neighborhood; providing extra funds to schools with harder to serve student populations; funding parent information centers and social marketing campaigns to facilitate an efficient and equitable school-to-parent matching process; promoting a mix of schools with a variety of selectivity criteria and lotteries for student admission; holding schools accountable for their "value added" (the achievement gain for the students who remain in the school long enough to produce a treatment effect); widely disseminating the performance measurement results; and closing schools with persistent failure records or records of financial malfeasance.

It would be hard to conclude from the early phase of NCLB choice that the policy as currently implemented is living up to the rhetoric of "liberation" used

by the framers of the Act. The choice provisions are difficult for many, if not most, districts to implement, give struggling schools only one year to improve before facing sanctions, and penalize too many schools for the sanction to be effective. The vast majority of students who desire a school transfer are not being allowed one. Testing schedules, capacity constraints, the large variation in state standards, and the high-between-district variation in access to high-quality alternatives represent substantial barriers to the prospect of NCLB transfers actually improving the plight of students in low performing, high poverty schools.

Absent significant changes in the implementation of the transfer provisions, and perhaps regulatory and legislative action, NCLB choice will probably have very little effect on educational reform. Because local school districts have a great deal of latitude in designing transfer programs, those districts that want to use the negative sanction will have legislative cover to do so and those that do not will be able to design programs that render the negative sanction impotent. Until state and local officials see evidence that negative sanctions work and that school choice is directly related to educational achievement, state and local resistance is also likely to remain strong.

The implementation difficulties of the NCLB school choice provisions likely stem from several sources. First, school choice is a flash-point issue in American educational policy. It threatens the interests of powerful actors in the educational system, such as teacher unions and school boards. There is ample evidence that the NCLB transfer provisions have been resisted by powerful local actors. Second, school choice threatens the cherished notion of the common school ideal. NCLB school choice may have had such a limited impact because of strong parental loyalty to neighborhood schools. Third, the potential costs and benefits of school choice are poorly understood. As a consequence, it is not clear what system of regulation and incentives should be employed to achieve the appropriate balance of educational equity and efficiency. This suggests that the NCLB transfer policy has been ineffective simply because it was poorly conceived and implemented. Finally, it could be that the federal role in education policy is too limited to present a credible threat to local entities that ignore legal mandates. Further research is needed to test the tenability of these propositions.

NCLB dramatically alters the balance of governmental authority in education, away from local control and toward state and federal control. While it fails to set national standards and test these standards with a national test, it provides a common set of negative sanctions. Based on local and state resistance to NCLB, the limits of this expanded federal role are being severely tested. The fact that the federal share of education spending was 8 percent in 2003 indicates that the federal role is limited. Furthermore, because this federal share varies across states (from 4% to 18%), the leverage federal power can exert over education at the local level may also vary.<sup>15</sup>

A good indication of the limits of federal power in education, and a substantial

limitation of the NCLB Act, is the inability of the federal government to set national standards and hold states accountable to these standards with a national test. The wide fluctuation of standards across the states results in the problem that cities with high proportions of schools in need of improvement are not necessarily those cities with the lowest NAEP scores (Casserly 2004).<sup>16</sup> Therefore, while NCLB is informed by the “liberation” hypothesis, in which students are to be freed from failed schools, the federal government cannot ensure the quality of standards across states, much less the quality of particular schools slated by local districts to accept NCLB transfers. To ensure comparability of educational opportunity across states, federal policymakers should carefully scrutinize state standards. As it stands now, the easiest way to ensure that maximum number of schools in a state meets AYP is to water down state academic standards and tests.

This suggests that the ability of federal authority to enforce compliance is sharply limited. Compliance with NCLB offers a good case study of the difficulty of enforcing federal accountability provisions in a loosely coupled educational system (Meyer and Rowan 1977). It is clear in Chicago at least that local officials are seeking to maintain the charade of minimal compliance with federal mandates in order to continue receiving federal funds.

There is some evidence that the Bush administration is using low transfer rates under NCLB as justification for a nationwide voucher program. Margaret Spellings, Secretary of the U.S. Department of Education, recently touted the Bush administration’s \$100 million “Opportunity Scholarship” program at a Christian school in New York. She said,<sup>17</sup>

In some districts, public school choice is non-existent because no public schools are meeting state standards and waiting lists for charter schools are out the door. I’ve heard stories about parents cramming into rooms like this one to draw numbers to see which students will make it off the waiting list. You shouldn’t need to win the lottery to send your child to a high-performing school.... More than 1,700 schools around the country have failed to meet state standards for five or six years in a row. And many of these schools are in districts where public school choice isn’t a real option. We’re proposing a new \$100 million Opportunity Scholarship Fund to help thousands of low-income students in these schools attend the private school of their choice or receive intensive one-on-one tutoring after school or during the summer.

If passed by the Congress, the scholarship program would be offered to students in the restructuring phase of NCLB. The fact that private schools would become options could increase participation rates (Howell 2004), but given the mixed results from voucher experiments and studies of private schools (Neal 1997; Lubienski and Lubienski 2006), substantially improved student outcomes

are not likely. In addition, providing vouchers to private schools would raise the question of whether private schools funded in part by public funds should be subject to the same accountability framework as public schools. This is not likely to be something private schools would accept; without this, however, public and private schools would not be on an even playing field, and vouchers could lose support if funds were spent without appropriate evaluation and accountability.

## CONCLUSION

NCLB represents a dramatic shift in federal education policy aimed at expanding equal access to educational opportunity for poor students. While the initial ESEA legislation focused on infusing federal funds into poor schools to address resource inequalities, NCLB focuses on the issue of school quality and whether poor children and those from traditionally underserved populations are learning what they need to know to succeed. The Act assumes that schools can spur complete proficiency in all students, including the disadvantaged and those with special educational needs. This, while it may be impossible without dramatic improvements in the early childhood education system, parent participation, and antipoverty programs, is a laudable goal.

Unfortunately, NCLB relies on blunt negative sanctions on low performing schools and must rely on local school districts to implement what is in many districts across the country an unworkable set of transfer policies. Schools are given only one year after being labeled as at-risk of facing the choice sanction to make changes in practice and improve student achievement in all the necessary subgroups. The elaborate formula used to define whether or not a school is meeting AYP labels so many schools as “in need of improvement” that the sanction becomes meaningless.

With the 2007 reauthorization of NCLB fast approaching, more research is urgently needed to test the tenability of these hypotheses with particular attention to whether and how NCLB choice promotes educational opportunity for those who transfer and encourages competition among schools. Research is also needed to determine the extent to which families offered a transfer receive the information and time to make an informed choice, receive opportunities to transfer to qualitatively better schools, and become integrated into the academic and social life of their receiving schools.

## Notes

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2. Quote is from a White House press conference transcript: <http://www.whitehouse.gov/news/releases/2001/01/20010123-2.html> (accessed May 26, 2006).
3. Many parents do, however, take school quality into consideration when determining where to live. National estimates suggest that about one-quarter of parents report moving to their current neighborhood for the schools (Wirt et al. 2004).
4. Exceptions to this rule are made if there are too few students in a subgroup to provide statistically reliable results. The minimum subgroup size is determined by each state.
5. Schools that fail to meet AYP for three years in a row must allow students free after-school tutoring. Schools failing to make AYP for five years face school restructuring. School restructuring may include conversion to a charter school or contracting out to a private management organization.
6. Of course, if enough poor students enter a new school, it is possible that the receiving school could become eligible for Title I funds. This would then make the school subject to school choice transfer provisions, however.
7. "School improvement" status is the designation for schools that fail to make AYP in two consecutive years.
8. This 2004 Phi Delta Kappan poll found that 54 percent of parents oppose vouchers to choose private schools at public expense, while 42 percent favor them. There is some evidence, however, that those who favor vouchers care more about this issue than those who oppose them. When asked whether knowing that a candidate for a national office supports vouchers, 43 percent said that this position would make supporting that candidate more likely, while only 37 percent said it would make supporting that candidate less likely (Rose and Gallup 2004).
9. The mayoral takeover occurred just seven years after a radical decentralization reform plan passed the legislature in 1988.
10. Some analysis indicates that this policy has yet to bear fruit. In neighborhoods with the highest levels of gentrification, white enrollment in the school system has decreased rather than increased. As one observer noted, "Yuppies don't have kids, they have dogs" (Weissman 2002).
11. Figures are from multilevel models that control for a number of student- and school-level models. See Lauen (2006, chapter 5) for tables and more details.
12. School productivity is defined as the average student-level residual from the following OLS test score gain model:  $ij01ij2ijjjij$ , where  $ij$  is the 9th grade reading test score (in grade-equivalent units) for student  $i$  who attended elementary school  $j$  in 8th grade;  $ij$  is the  $i$ th student's 8th grade reading test score (in grade-equivalent units);  $ij$  is a vector of student background characteristics such as poverty, gender, and race/ethnicity;  $jj$  is a vector of elementary school fixed effects to control for prior school quality differences; and  $ij$  is the student-specific error component of test score gain. High-school  $k$ 's value added measure,  $k$ , is defined as the within-high-school average of the student-level residual:  $kikk$ . This specification of the value added model was proposed by Cullen et al. (2005). Defining and measuring school productivity is a contentious area of educational policy; further research is needed to determine the validity of this particular specification of the productivity of Chicago's neighborhood high-schools.
13. This figure is the result of author calculations based on data provided by the state. It is not shown in the table because comparable figures are not available for previous years.
14. CPS later offered the unaccounted for slots to students in 15 other of the lowest performing schools. Data on the number of students who applied for transfers from this group are unavailable.
15. Figures are from author calculations of state-level federal funding shares and are based on 2003 Census Bureau statistics. (U.S. Census Bureau 2005)
16. NAEP, or the National Assessment of Educational Progress, is a national test that is "low stakes." In other words, states are not currently held accountable for subpar performance on NAEP.
17. Remarks published online at <http://www.ed.gov/news/pressreleases/2006/04/04052006.html> (accessed on May 26, 2006)

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