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## Illusion of School Choice Leaves Chicago Pupils with No Choice

Elise Robie

School choice ostensibly empowers parents and students to have control over their education. However, despite the façade of school choice in Illinois, in reality parents and students effectively have little to no school choice, especially in the City of Chicago. The presence of charter schools overpowers traditional public schools, and without a solid voucher system parents do not have valid control over their children's education. Parental involvement in a child's education plays a crucial role in a child's success,<sup>1</sup> and lack of genuine school choice stymies parental involvement and control.

### SCHOOL VOUCHERS

In 2010, the Illinois General Assembly attempted to pass SB2494, a bill that would approve a school choice voucher program for Chicago Public Schools ("CPS") to be administered by the Illinois Board of Education.<sup>2</sup> Although the bill passed in the Senate, the House defeated it.<sup>3</sup> Generally, school voucher programs put the power of school choice in parents' hands by diverting funds that would be used by the student at a traditional public school to a higher performing school that the child or parent chooses to attend – an option already available for families with income allowing them to do so.<sup>4</sup> This

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<sup>1</sup> According to the National Conference of State Legislatures, research shows that students with parents engaged in their education tend to receive higher test scores, higher grades, and have a higher graduation rate. JOSH CUNNINGHAM, COMPREHENSIVE SCHOOL CHOICE POLICY: A GUIDE FOR LEGISLATORS 23 (2013), available at <http://www.ncsl.org/documents/educ/ComprehensiveSchoolChoicePolicy.pdf> ("A pillar of the school choice idea is to give parents the authority to make the best decision for their child's education. In some cases, this requires providing parents with the necessary resources for them to make school choices that ensure they select high-quality schools. In other cases, this means empowering parents to intervene in their current low-performing school.").

<sup>2</sup> *It's time for school choice in Illinois*, Op-Ed., CHI. TRIBUNE (Jan. 19, 2014) available at [http://articles.chicagotribune.com/2014-01-19/opinion/ct-edit-school-vouchers-edit-0119-2014-0119\\_1\\_school-choice-charter-schools-recovery-school-district](http://articles.chicagotribune.com/2014-01-19/opinion/ct-edit-school-vouchers-edit-0119-2014-0119_1_school-choice-charter-schools-recovery-school-district) [hereinafter *Time for school choice*]; See S.B. 2494, 96th Gen. Assemb. Reg. Sess. (Ill. 2011), available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2494&GAID=10&DocTypeID=SB&LegId=48830&SessionID=76> for status of the bill and legislative history.

<sup>3</sup> The bill lost 66-48 in the House. *Time for school choice*, *supra* note 2.

<sup>4</sup> Some voucher programs allow parents to use the money to pay tuition at private schools. Darren Lubotsky, *School Vouchers and Charter Schools in Illinois*, INST. OF GOV'T & PUBLIC

attempt to pass SB2494 was the last meaningful push for school vouchers in Illinois; other similar efforts have failed.<sup>5</sup>

Opponents of school vouchers argue that they infringe upon state constitutional provisions prohibiting state funding for religious schools.<sup>6</sup> However, under voucher programs, students are not told to attend a specific school; students may attend private schools, parochial schools, charter schools, public schools, or magnet schools.<sup>7</sup> Further, voucher programs allow the state to have greater regulatory control over the quality of the school, unrelated to religious education, because voucher programs require minimum participation standards that schools must adhere to in order to admit voucher students.<sup>8</sup> Since parents would have the choice of where to send their children, proponents assert that voucher programs force low performing schools to improve in the face of losing students.<sup>9</sup> A continuing concern for voucher program opponents is that as students leave traditional public schools, funding for those schools will dwindle while the cost for maintaining facilities and teachers at those schools will remain the same, effectively leaving these schools underfunded.<sup>10</sup>

#### TAX CREDITS

While Illinois lawmakers have not instituted a voucher system for students, there is an Illinois tuition tax credit called the “education expense credit.”<sup>11</sup> This credit allows individuals to be reimbursed for twenty-five percent of their education expenditures after they spend the first \$250, with a maximum return of \$500.<sup>12</sup> These funds may be applied to expenses for eligi-

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AFFAIRS 84, 85 (2011) available at [http://tigger.uic.edu/~lubotsky/uploads/2/3/1/7/23178366/p84-93\\_chartervoucher.pdf](http://tigger.uic.edu/~lubotsky/uploads/2/3/1/7/23178366/p84-93_chartervoucher.pdf) (“School vouchers give financial support to parents who want to send their child to a school other than their local public school – effectively taking tuition dollars from the local public school and diverting it to the school where the child attends.”).

<sup>5</sup> *Time for school choice*, *supra* note 2.

<sup>6</sup> JOSH CUNNINGHAM, *supra* note 1 at 11.

<sup>7</sup> Paul E. Peterson, *The Case for Vouchers*, PBS <http://www.pbs.org/wgbh/pages/frontline/shows/vouchers/choice/provouchers.html> (last visited Apr. 13, 2015) (“[I]n fact, you can send your child to a secular school—a public school, a charter school, a magnet school—you have lots of other choices out there. So nobody’s being told they have to have a religious education.”).

<sup>8</sup> JOSH CUNNINGHAM, *supra* note 1 at 9

<sup>9</sup> *School Vouchers*, NAT’L CONF. OF STATE LEGS., <http://www.ncsl.org/research/education/school-choice-vouchers.aspx> (last visited Apr. 13, 2015).

<sup>10</sup> *Id.*

<sup>11</sup> 35 Ill. Comp. Stat. 5/2-201(m) (2014).

<sup>12</sup> *Id.*; *Illinois - Tax Credits for Educational Expenses*, Friedman Foundation for Educational Choice <http://www.edchoice.org/School-Choice/Programs/Tax-Credits-for-Educational-Expenses.aspx> (last visited Apr. 13, 2013) [hereinafter *Tax Credits for Education*].

ble students attending public schools, private schools or who are home schooled.<sup>13</sup> Thus, these credits are similar to typical voucher programs; additionally, the states would have more control over traditional voucher programs, whereas under the tax credit program individuals choose at which institution they use their credits.<sup>14</sup> These credits are designed to enable middle- and low-income families to be able to afford private school.<sup>15</sup> However, with the expenses of private school and transportation, the parent may not actually have as much choice as it initially appears.

#### NO CHILD LEFT BEHIND

Further, if a Title I school does not make adequate yearly progress (“AYP”) for two consecutive years, then under the Federal No Child Left Behind Act of 2001, the school is considered to be “in need of improvement” and the school must allow the parents public school choice.<sup>16</sup> The state first directs students to qualifying schools in the area; however, if no qualifying schools exist in the area, the district must attempt to create a cooperating agreement with eligible schools in surrounding districts.<sup>17</sup> Although surrounding districts are not required to enter into cooperative agreements, they may choose to after evaluating a number of factors, including enrollment capacity.<sup>18</sup> Practically speaking, however, few transfers have been prompted by No Child Left Behind because schools that are higher performing frequently do not have empty seats to receive transfer students.<sup>19</sup>

<sup>13</sup> 35 Ill. Comp. Stat. 5/2-201(m). Eligible children are “students who are residents of Illinois, who are younger than 21, and have attended kindergarten through 12th grade in a public or private school in Illinois or were homeschooled.” *Tax Credits for Education*, supra note 12.

<sup>14</sup> CUNNINGHAM, supra note 1 at 15.

<sup>15</sup> *Id.* at 21.

<sup>16</sup> For the 2015 school year, however, the Illinois State Board of Education received a waiver from No Child Left Behind, meaning that for the 2014-2015 school year there will be no choice school choice requirements for schools not making adequate yearly progress. The waiver does not apply to those children who previously transferred to a choice school; however during the waiver period the district does not have to pay for transportation to the choice school. *What Is Public School Choice*, ILL. STATE BD. OF EDUC., <http://www.isbe.net/grants/html/choice.htm> (last visited Apr. 13, 2015).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Joseph P. Viteritti, *The Federal Role in School Reform: Obama’s Race to the Top*, 87 NOTRE DAME L. REV. 2087, 2013 (2013).

## CHARTER SCHOOLS

Finally, Illinois offers the option of charter schools, which are public schools operated independently by entities outside of the local school board.<sup>20</sup> This feature of independent operation allows charter schools to creatively sculpt school curriculum and target specific group needs.<sup>21</sup> The state provides charter schools with pre-determined funding based on student enrollment.<sup>22</sup> Illinois first authorized charter schools in 1996.<sup>23</sup> According to the Illinois Charter School Law (“Charter Law”), the purpose of charter schools is to promote options within the public school system and “[to] provide pupils, educators, community members, and parents with the stimulus to strive for educational excellence.”<sup>24</sup> The Charter Law further states that it strives to offer increased learning opportunities for “all pupils” with a special emphasis on “at-risk pupils” in a non-discriminatory manner and to expand parental and student choice within the public school system.<sup>25</sup> The Charter Law currently limits the number of charter schools in the state to 120, and further limits them to no more than 70 schools in a city with a population of more than 500,000, a limitation that applies to Chicago.<sup>26</sup> The Charter Law requires that charter schools accept any student within its district that wishes to attend; however, if more students apply than the charter school has space to accommodate, the school must implement a random lottery.<sup>27</sup>

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<sup>20</sup> See Lubotsky, *supra* note 4 at 84 (listing “non-profit organizations, for-profit organizations, community groups, or educators” as possible operators).

<sup>21</sup> *Id.* at 85.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 87.

<sup>24</sup> 105 Ill. Comp. Stat. 5/27A-2(a)(3) (1998).

<sup>25</sup> 105 Ill. Comp. Stat. 5/27A-2(b)(2),(6) (1998).

<sup>26</sup> 105 Ill. Comp. Stat. 5/27A-4(b) (2015); Lubotsky, *supra* note 4 at 87.

<sup>27</sup> Lubotsky, *supra* note 4 at 85. See 105 Ill. Comp. Stat. 5/27A-4(d) (2015) (“Enrollment in a charter school shall be open to any pupil who resides within the geographic boundaries of the area served by the local school board, provided that the board of education in a city having a population exceeding 500,000 may designate attendance boundaries for no more than one-third of the charter schools permitted in the city if the boundaries are needed to relieve overcrowding or to better serve low-income and at-risk students. Students residing within an attendance boundary may be given priority for that enrollment, but must not be required to attend the charter school.”); see also 105 Ill. Comp. Stat. 5/27A-4(h) (2015) (describing the random lottery system that is intended to provide every student an equal opportunity for admission and prohibiting an admissions process subsequent to the lottery system that creates a barrier to enrollment).

Although charter schools are an option for students in Illinois, their continued growth remains controversial.<sup>28</sup> While supporters argue that charter schools grant parents the ability to make a choice for their child's education, opponents contend that charters take away money from already struggling traditional public schools.<sup>29</sup> This critique is strengthened by the fact that the majority of charter schools exist in low-income, African-American and Latino communities.<sup>30</sup> Research has shown that contrary to a frequently stated goal of charters, they are more likely to be single-race schools than traditional public schools.<sup>31</sup> Other complaints about charters include their lack of adequate accessibility for students with disabilities and an increased rate of expulsion.<sup>32</sup>

Notwithstanding the seeming popularity of charter schools, their effectiveness remains to be seen.<sup>33</sup> A recent study by the University of Minnesota found that despite claiming to increase academic performance, on average charter schools in Chicago score lower than traditional public schools.<sup>34</sup> What's more, many blame the vast number of school closings on parental choice policies because of the increasing transfer of students to charter schools and the increasing conversion of traditional public schools into charter schools by public officials.<sup>35</sup> Between 2001 and 2011, Chicago closed no more than 16 schools each

<sup>28</sup> See *Charter Schools in Chicago: No Model for Education Reform*, UNIV. OF MINN. LAW SCHOOL 1 (2014) ("Enrollments in Chicago charters increased by more than nine times between 2000 and 2013.") [hereinafter, *Charter Schools in Chicago*].

<sup>29</sup> Stephanie Banchemo, *Charter School Fight Flares Up in Illinois*, THE WALL ST. J. (Apr. 8, 2014, 9:16 PM), available at <http://www.wsj.com/articles/SB10001424052702304819004579489932675910294> ("Teachers unions often oppose charters—funded by taxpayers but run by independent groups—because they typically hire nonunion workers and, labor leaders argue, drain money from struggling traditional public schools. Proponents say charter schools offer parents a choice and are free to adopt innovations such as instituting a longer school day and year, or laying off teachers based strictly on performance.").

<sup>30</sup> *Id.*

<sup>31</sup> *Charter Schools in Chicago*, *supra* note 28 at 1.

<sup>32</sup> CUNNINGHAM, *supra* note 1 at 4; *Charter Schools in Chicago*, *supra* note 28 at 1.

<sup>33</sup> See CUNNINGHAM, *supra* note 1 at 5 ("According to 2011 data provided by the National Alliance for Public Charter Schools, a higher percentage of students in traditional public schools tested at a proficient level on fourth- and eighth-grade National Assessment of Educational Progress (NAEP) exams in math and reading than did charter schools. . . . In a 2013, CREDO [Center for Research on Education Outcomes]. . . found that 25 percent of charter schools performed better than nearby traditional schools, 56 percent performed similarly, and 19 percent performed worse." However, "[m]ore detailed research has shown that certain groups of charter school students – especially middle school and low-income charter students – perform stronger academically.").

<sup>34</sup> *Charter Schools in Chicago*, *supra* note 28 at 1.

<sup>35</sup> See Nicole Stelle Garnett, *Disparate Impact, School Closures, and Parental Choice*, 2014 U. CHI. LEGAL F. 289, 292-94 (2014) (discussing the racial implications of school choice and

year; however, in the spring of 2013, Chicago closed 49 schools.<sup>36</sup> Some critics note that these school closures risk sending a message that the urban residents are being abandoned and the public school officials are pulling out of the neighborhood.<sup>37</sup> On the other hand, state and local officials skew this process as converting traditional neighborhood schools to charter schools to cure “chronic academic underperformance.”<sup>38</sup>

### CONCLUSION

Although the Illinois State Board of Education lists a number of reasons in support of school choice, the current state of education in Illinois clearly presents serious barriers to school choice.<sup>39</sup> Even transportation to schools is not guaranteed. Under Illinois law, only certain districts are required to provide transportation if the student lives over one and a half miles from the school, and districts with mass public transportation to offer that as the method of transport.<sup>40</sup> With the privatization of education, charter schools, and school vouchers, most children are still “left behind” in failing schools because they cannot be selective about enrollment. It appears that school choice comes at the expense of destabilization of good schools in low-income communities in Chicago. So, what does school choice really mean?

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school closures: “In debates about public school closures, for example, proponents of traditional public schools frequently blame parental choice policies (especially charter policies) for necessitating public school closures in minority neighborhoods and demand that parental choice be constrained in order to preserve neighborhood public schools); *see also id.* at 299 (“Many public schools are closing because they are operating far below enrollment capacity. . . . [CPS] claims that 330 of 681 school buildings are under-enrolled, and over 140 are more than half empty.”).

<sup>36</sup> *Id.* at 291-92.

<sup>37</sup> *Id.* at 319.

<sup>38</sup> *Id.* at 305.

<sup>39</sup> To improve student learning and equity; to decrease racial isolation and improve school integration; to increase district budgets because of increasing student population and average daily attendance; to increase parent support and involvement in schools; to provide alternative types of learning environments that may better match children’s needs; to encourage the creativity of educators; to promote focused cohesive school programs; to spur school improvement through competition. *What Is Public School Choice*, *supra* note 16.

<sup>40</sup> Only the following are required to provide transportation: “community consolidated districts, community unit districts, consolidated districts and consolidated high school districts, and combined school districts if the combined school district includes any district which was previously required to provide transportation.” *Pupil Transportation Frequently Asked Questions* ILL. STATE BD. OF EDUC. 1, [http://www.isbe.net/funding/pdf/pupil\\_transp\\_faq.pdf](http://www.isbe.net/funding/pdf/pupil_transp_faq.pdf).