



How Legislation and Litigation Shape School Choice

EXECUTIVE SUMMARY

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March 2008

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Since its appearance on the educational landscape, school choice has engendered considerable controversy. Those controversies are captured in two forms of “law”—legislation and litigation. Government legislation at all levels codifies the results of political struggles around school choice and defines choices available to parents. Those unhappy with the results have brought litigation to determine whether the policies are consistent with constitutional provisions and other existing laws. This policy brief examines the relationships between various forms of school choice and the legal authority that both binds and bounds them. As the discussion will show, both the development of and legal challenges to school choice in its various forms can be traced to a tension between the legal principle that parents should be able to direct the upbringing of their children and the legal principle of *parens patriae* (the government is the ultimate guardian), which forms the foundation for compulsory education in the United States. As such, school choice legislation and litigation go to the very heart of public education and the societal values it reflects.

In light of recent legal events, the following recommendations are offered to officials to guide their work as they consider the implications of the choice initiatives established, the purposes they intend to serve, and the civic principles embedded by their adoption:

- Examine parental choice programs to ensure that they espouse the values of the communities they serve in a manner consistent with federal and state constitutional guarantees.
- Ensure that parental choice programs serve educational opportunity and equity rather than undercut them.
- Consider carefully the implications of any choice program, not only for those who “choose” but also for those who do not.
- Engage the research community not only to inform the debate about effectiveness, but also to track the implications of the various choice programs undertaken.