

## CHOICE IN EDUCATION



**P**arental choice. Education choice. School choice. Vouchers. Scholarships. These and other terms are the vernacular in what is now a twenty-five year old movement to provide to parents direct purchasing power over the education of their children. No matter what it's called, your vantage point on the issue will have you labeled a believer, a skeptic, a staunch opponent, or worse.

This isn't news to most people who have endured politics long enough to get to Capitol Hill. They most likely think this isn't an issue they'll have to contend with very much. Education and governance is the purview of states, and that's where the lion's share of funds—and responsibility—for education rests. Federal funds and regulation in these areas has to focus on aspects that do not conflict with state authority, in accordance with the constitutional directive that powers not directly given to the federal government are reserved to the states.

So what is it that the federal government can and should do on the subject of choice in education? And how can even those opposed on principle come to embrace this increasingly accepted method of education reform?

There are three things Congress and the President can come together to do that are not only right, but also good for education and its myriad participant groups. These are things that should not beget controversy. Some are old themes, some are variations on old themes, and some are new.

But first we must start with a simple proposition. Can we all agree that every child born in the U.S. is rightfully entitled to an education that guarantees fundamental literacy, numeracy, and a basic understanding of the rights and duties of a U.S. citizen?

And if we can agree on that, where is the right place to make that guarantee?

Of the 50 state constitutions in the United States, only a few mention excellence in education as a guarantee. These guarantee states fall into three groups. First, there are the adequacy states, which promise only to deliver an education that is “adequate.” Second, there are the equality states which guarantee a certain level of “equality,” which, a court might

*The federal government could mandate boldly that a state may lose its right to educate any child whom it fails.*

be able to measure using some definition of quality as a yardstick. Finally, there are those that are far more nebulous, speaking of “resources” and “provisions” for education, but in the end make no firm commitment as to the positive educational outcome that should transpire.

It is important to remember that the formative thinking and writing of these state constitutions was done against a backdrop of many different educational environments. In the early colonies, some excellent education was carried out in schoolhouses, churches, and homes. The framers of these state constitutions merely sought to extend the state’s sanction of education to those who might not find themselves in one of these already-existing educational institutions. Later states, however, created provisions guaranteeing “free,” “appropriate,” “adequate,” and other adjective-laced provisions against a backdrop of a system of public schools already in place.

In most instances, the schools were operating well, creating environments of order and respect headed by high quality teachers who taught everything from religion, to surveying, to history, reading, writing, mathematics, music, and foreign language.

In no case, however were the guarantees of the states written against a backdrop of the conditions that plague our students today. Whether in crowded suburban schools that offer a smorgasbord of classes of little depth (putting our students at a competitive disadvantage abroad), or in

urban and rural poor schools (where children's conditions at home follow them to school and the schools do not find ways to compensate for those deficiencies), the conditions constricting children today are overwhelming compared to those that existed when the drafters of the state constitutions rather vaguely assigned the power to educate to various political bodies with little promise of a positive outcome.

The fact that, generally speaking, the states have failed to ensure what their constitutions intended doesn't mean the federal government should usurp their power, but it does mean that we must find a way to invalidate the provisions that have failed to deliver on our simple proposition as stated earlier:

*Every child born in the U.S. is rightfully entitled to an education that guarantees fundamental literacy, numeracy, and a basic understanding of the rights and duties of a U.S. citizen.*

Given this situation, it may be necessary to construct laws that push the states to think hard about changing their systems—or their constitutions—so that every child's education meets at least this minimum standard.

The federal government could mandate boldly—as it did, in a more limited way, in No Child Left Behind—that a state may lose its right to educate any child whom it fails. Congress would not have to prescribe an alternative. Rather, Congress simply could require the state to devise an alternative that allowed parents to find a school that meets the needs of their child. The funds for that education would, as in a scholarship or voucher, be designated to the school of the parents' choice. That's one idea, which perhaps sounds a bit radical to some, but it is presented to raise a question: when do we get to say stop to a system that is not working for most kids?

If the education system were like the home of an abused child, we would step in and remove the victim. In schools, however, we either blame the victim, blame the circumstances, or excuse the adults who fail to deal with the problem. This is not acceptable.

How can Congress fix this while avoiding a full-scale war with teachers' unions or with those who (wrongly) believe the separation of church and state means that funding a student to attend a religious school chosen by her parents amounts to a prohibited establishment of a state religion? It's actually quite easy and would cost very little. Three steps:

### **1. Order the U.S. Justice Department to Study the Blaine Amendment**

Blaine Amendments are a part of many state constitutions. These amendments, adopted as a result of anti-Catholic fervor in the late 1800s, prohibit the use of state funds at “sectarian” schools. The wording of many of the Blaine Amendments exceeds the language of the United States Constitution. The lingering impact of these amendments has been credited with stopping school choice from becoming a reality in many states. Incoming Attorney General Eric Holder has an honorable record of principled legal pursuits. He can draw from his own humble beginnings in the Bronx and his experience of public schools in Queens to inspire his staff to ask what public education is and what it should be. He can further instruct his Office for Civil Rights to determine if violations of civil rights laws are occurring as a result of basic human neglect—not to mention negligent educational practices—in our public schools today.

Should Congress not pursue this, President Obama is able to issue an executive order accomplishing the same thing. Congress, however, is a critical ingredient, as such a report will be subject to much higher public scrutiny if demanded by law than if it is requested by the executive branch of government.

### **2. Make Federal Education Funds Portable**

The federal government cannot prescribe, but it can support and enable, innovations. While the charter school grant program funds the start-up of such innovative public schools, the delivery of wider (e.g. private) choice options could be supported by existing funds simply by creating a rule that allows entitlement dollars to be distributed through state education agencies in states where school choice programs currently exist.

The Ohio Department of Education, for example, writes checks on behalf of parent choices to participating private schools. The program, upheld by the U.S. Supreme Court, allows state monies to follow students as required by state law. The U.S. Supreme Court's sanction did not extend to the federal government at the time, as no federal funds were involved. However, federal funds become state funds once they cross the border. As a result, federal money too should be available to fund parental choices in states already implementing such programs. Programs like Title I, Title II, Title IV, and others should be divvied up proportionally across public, private, and even parochial school sectors. In most cases, this funding mechanism already occurs with charter schools. Although its constitutionality has been challenged in various states, it has always been upheld.

*Educational choice requires the national government to acknowledge the 14th Amendment sovereignty that imposes that responsibility on the states.*

### **3. Showcase and Applaud D.C. Innovations**

There is no other city in the nation that is home to the robust innovational environment that characterizes the District of Columbia these days. More than 30 percent of students are enrolled in high quality charters, which by every measure are performing better than most comparable public schools in the area. Two thousand poor students are choosing private and Catholic schools, subsidized by a federal grant that allows these children access to quality schooling beyond their neighborhoods. And the Mayor has adopted a school reform initiative through his Chancellor, Michelle Rhee, that promises to boost the quality of D.C. teachers for the children that have no other option, by providing them pay in return for better and higher performance.

Congress has all but ignored these initiatives in the past, except when it helped pass the D.C. appropriation enabling the opportunity scholarships or when it supported start up funds for the nation's charters. President George W. Bush helped push through these bi-partisan initiatives, but

since then, these programs regularly have been attacked by lawmakers who do not live here and who do not appreciate how essential they are to improving the life chances of the children in our nation's capital.

These programs exist as necessary options in a city long plagued by failure in its public schools. Broad local support for these reforms, combined with strong results, merits the attention of Congress. By continuing these and other programs and by saluting those who try to reform the status quo, Congress and the new President can add momentum and national recognition to these life saving efforts.

### **Conclusion**

Making laws through the democratic process, as the old adage goes, is like making sausage. We expect messy disagreements and deal making on every issue. The subject of school choice, however, easily can be taken off the table for any Congressman looking for a way to escape difficult deliberations. Again, three steps:

1) Send the question off to the Justice Department to study as a civil rights matter; 2) Enable money already flowing to the states more broadly to support school reforms that the states already sanction; and 3) Applaud what local leaders already have embraced in the proverbial U.S. City on a Hill.

You can be agnostic on the issue and still let a thousand flowers bloom. Simply acknowledge that choice is a reflection of modern day conditions. Educational choice does not rely upon federal support, but it does require the national government to acknowledge the 14th Amendment sovereignty that imposes that responsibility on the states.

## About the author

Jeanne Allen is the Founder and President of the Center for Education Reform, a Washington, D.C. based organization driving the creation of better educational opportunities for all children by leading parents, policymakers, and the media in boldly advocating for school choice, advancing the charter school movement, and challenging the education establishment.

Co-author of *The School Reform Handbook: How to Improve Your Schools*, Allen is recognized as one of the country's leading education experts. She appears frequently on national television and radio programs and can often be found in the pages of the nation's most influential newspapers and magazines.

An advisor to a number of education reform groups, grassroots organizations, foundation executives, and legislative leaders, Allen also has served as a participant in several exclusive presidential and administration roundtables.

She is the mother of four school-age children, Johnny, Teddy, Anthony, and Mary Monica and is married to Dr. Kevin L. Strother.