

# Policy Analysis

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Routing

## *Corruption in the Public Schools The Market Is the Answer*

by Neal McCluskey

### Executive Summary

One of the most frequently voiced objections to school choice is that the free market lacks the “accountability” that governs public education. Public schools are constantly monitored by district administrators, state officials, federal officials, school board members, and throngs of other people tasked with making sure that the schools follow all the rules and regulations governing them. That level of bureaucratic oversight does not exist in the free market, and critics fear choice-based education will be plagued by corruption, poor-quality schools, and failure.

Recently, news surfaced that appeared to justify critics’ fears. Between the beginning of 2003 and the middle of 2004, Florida’s *Palm Beach Post* broke a slew of stories identifying corruption in the state’s three school choice programs. The number of stories alone seemed to confirm that a choice-based system of education is hopelessly prone to corruption. But when Florida’s choice problems are compared with cases of fraud, waste, and abuse in public schools—schools supposedly inoculated against corruption by “public accountability”—choice problems suddenly don’t seem too bad.

So which system is more likely to produce

schools that are scandal free, efficient, and effective at educating American children? The answer is school choice, precisely because it lacks the bureaucratic mechanisms of public accountability omnipresent in public schools.

In many districts bureaucracy is now so thick that the purveyors of corruption use it to hide the fraud they’ve perpetrated and to deflect blame if their misdeeds are discovered. However, for the principals, superintendents, and others purportedly in charge of schools, bureaucracy has made it nearly impossible to make failed systems work. Public accountability has not only failed to defend against corruption, it has also rendered many districts, especially those most in need of reform, impervious to change.

In contrast to our moribund public system, school choice isn’t encumbered by compliance-driven rules and regulations, which allows institutions to tailor their products to the needs of the children they teach and lets parents select the schools best suited to their child’s needs. And accountability is built right in: schools that offer parents what they want at a price they are willing to pay will attract students and thrive, while those that don’t will cease to exist.

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## **Introduction**

Recently, readers of Florida's *Palm Beach Post* could have easily been excused for thinking that state-run school choice programs that enable students to attend private schools are the best friends of every scam artist in the Sunshine State. Week after week, between early 2003 and mid-2004, the *Post* ran articles chronicling troubles in the state's choice initiatives. Much of what was discovered was unsettling. For instance:

- Florida Department of Education officials moved to a different job, and eventually fired, a whistleblower who accused the department of falsifying information on “fiscal soundness” letters from private schools serving voucher students.<sup>1</sup>
- A private school tied to a suspected terrorist received approximately \$350,000 in voucher funds in 2002.<sup>2</sup>
- A scholarship-financing organization (SFO), which received hundreds of thousands of dollars to be distributed to low-income children through the state's Corporate Income Tax Credit Scholarship Program, was run by a bankrupt individual with a history of legal problems. He used the money for himself and his companies instead of for supplying scholarships.<sup>3</sup>
- Only a few days after her charter school had been closed for mismanagement, a woman opened a private school where she taught voucher students.<sup>4</sup>
- A major SFO was found to have taken out \$5.2 million in questionable loans and to have possibly sought kickbacks from schools to which it sent voucher students.<sup>5</sup>
- A private school cashed checks for 18 voucher students even after those students had transferred to public schools.<sup>6</sup>
- A chain of private schools that enrolled voucher students hired as director of one of its schools a man who had been arrested for child abuse a year earlier.<sup>7</sup>
- Seven employees at a private school were

charged with defrauding voucher programs and the federal free- and reduced-price lunch program by stealing more than \$200,000.<sup>8</sup>

Dirty dealings have also been discovered recently in Milwaukee, Wisconsin, the home of the nation's first major voucher program. In July 2004 two schools were kicked out of the program for malfeasance. Alex's Academics of Excellence, whose chief executive officer was a convicted rapist, was removed after the school was evicted from its building for failing to pay rent. The school had also been accused of misusing state funds, failing to comply with state financial-reporting requirements, and allowing employees to use drugs on school grounds. The other ejected school, the Mandella School of Science and Math, was expelled for owing the state \$330,000 and failing to comply with reporting requirements. Mandella's owner allegedly used a portion of the money he owed to buy two luxury cars.<sup>9</sup>

In light of the litany of alleged abuses in Florida, and no doubt with trouble elsewhere in mind, the *Palm Beach Post* has advised extreme caution about school choice. “Yes, look at Florida, voucher opponents agree,” wrote reporter S. V. Dáte in November 2003, “three separate, statewide programs riddled with high-profile abuse and not one shred of evidence that participating students are even doing as well as they were in the schools they left. . . . Folks in other states thinking of introducing vouchers should see Florida as a cautionary tale.”<sup>10</sup>

Given the *Post's* reporting, as well as scandals in choice systems outside Florida, the potential for abuse in “free-market” education appears to be significant. But the *Post* isn't the only Florida newspaper capable of conducting an investigation. So too is the *Miami Herald*, which in 2002 ran “Cheating the Classroom,” a series that examined corruption and mismanagement in the Miami-Dade public school system. Among the *Herald's* discoveries:

- While a member of the school board, a Miami-Dade landlord made more than \$1 million in rent payments from a pro-

gram designed to aid at-risk children. That board member was later found guilty of committing rent fraud in residential units he owned.<sup>11</sup>

- An influential lobbyist, who as of April 2002 had held fundraisers for six of Miami-Dade’s nine school board members, made millions, including \$4 million on just one deal, lobbying the board on behalf of powerful clients.<sup>12</sup>
- Between 1989 and 1997 the cost of construction of a single school ballooned from its original price of \$27.8 million to \$75 million, and as of April 2002 the school still suffered from about \$1 million in major repair problems.<sup>13</sup>
- A recent superintendent’s highest degree was a master’s from a program that required only eight four-day courses and an exam; his deputy superintendent held a Ph.D. from a “diploma mill.”<sup>14</sup>
- An internal district audit found that district purchasing was riddled by abuse and that staff often disregarded competitive-bidding requirements.<sup>15</sup>
- After the deputy superintendent for facilities management reported that millions of dollars were being wasted on shoddy construction, he was transferred to a data entry job and received no raises for five years.<sup>16</sup>
- The district’s maintenance program has become a “jobs for life” initiative, in which efforts to lay off workers—and save the district millions of dollars—have consistently been quashed by unions.<sup>17</sup>

The *Herald’s* conclusions about the district, in light of its findings, were no less pessimistic than the *Post’s* assessment of choice programs. Indeed, they were much worse: While the *Post* suggested that unscrupulous people were taking advantage of choice programs with weak accountability provisions, the *Herald* found that abuses in Miami-Dade were systemic and demoralizing and emanated from the very people entrusted with keeping the schools “clean”—the district’s administrators and board of education:

Over a decade, the district churned out millions for controversial new construction and costly land buys, take-home cars for top brass, and prized contracts for private contractors and education firms. All were approved by either the district’s elected School Board or by administrators with wide, but often loosely monitored, discretion to hand out money or recommend how it’s spent.<sup>18</sup>

The consequences for the district have been disastrous. “Last year, a school survey designed by a Florida International University professor revealed a pervasive sense of low morale,” reported the *Herald*, “with principals saying they believe the district is riddled with cronyism, incompetence, and political interference.”<sup>19</sup>

So which schools are more likely to be free of corruption and fiscal mismanagement, traditional public schools or private schools in a free market? Does the greatest accountability come from the bureaucratic rules and regulations of traditional school districts like Miami-Dade or from choice, in which accountability is meted out by parents who direct funds to the schools that do the best job of educating their children and ignore those that do not?

Despite the muckraking of the *Palm Beach Post* and opponents of school choice, the evidence demonstrates that individuals left to their own devices will collectively produce accountability mechanisms that far exceed, both in effectiveness and efficiency, any governmental systems.

## Traditional Accountability

A December 2003 *Palm Beach Post* editorial, which reviewed abuses in school choice programs unearthed up to that point, declared that Florida choice programs constituted a “system designed to fail the test of public accountability.”<sup>20</sup> If “public accountability” is defined as the mechanism that ensures that taxpayer dollars are used to acquire the best, most cost-effective education for children, it is

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important to determine what mechanisms public schools have that choice programs lack and how well they actually work.

A good place to start is to examine public accountability as it developed in American government generally, which enables its growth in American education to be placed in historical context.

According to political scientists Randall Clemons and Mark McBeth, in the nation's early years government was relatively decentralized, reflecting the then-predominant belief that government should be small and unobtrusive. By the mid-1800s, however, the country was transitioning from a rural, agrarian society to an increasingly urban and industrial one. The purview of government grew with those changes,<sup>21</sup> as governments offered more and more services to incoming people, often to gain their political allegiance, especially in the nation's cities.<sup>22</sup>

Unfortunately, as it grew, government became increasingly infected with corruption, a trend exemplified by Tammany Hall, the political machine that dominated New York City politics from the mid-19th to the early 20th century<sup>23</sup> and thrived on practices ranging from patronage to bribery.<sup>24</sup> By the late 1800s, graft and cronyism had become so expected at all levels of government that in 1881 a job seeker, enraged by his inability to land a patronage position to which he thought he was entitled for having worked on President James Garfield's election campaign, assassinated the new president.<sup>25</sup>

In reaction to Garfield's death, the federal government passed the Pendleton Act, which created the merit-based Civil Service and, according to Clemons and McBeth, "represented the first attempt to rationalize the bureaucracy." It also marked the arrival of a new era of progressive government intended to root out corruption of all kinds. A few years later, future president Woodrow Wilson provided his own seminal contribution to scientific, clean governance, *The Study of Administration*, which argued for a separation of administration from politics in order, according to Clemons and McBeth, "to protect the administrative sphere from par-

tisanship, exploitation, and corruption."<sup>26</sup>

By the arrival of the 20th century, efforts to curb government abuses were joined by regulatory movements aimed at protecting the public from unsafe products and working conditions. Calamities such as the 1911 Triangle Shirtwaist factory fire, in which 146 workers perished because all the doors through which they could have escaped their flame-engulfed factory were locked,<sup>27</sup> led to widespread regulation of workplace safety.<sup>28</sup> Similarly, regulations intended to protect consumers' health and safety ballooned during that time, largely in reaction to newspaper stories about horrific manufacturing conditions and Upton Sinclair's *The Jungle*, which depicted revolting conditions in Chicago's meat-packing plants.<sup>29</sup> From those movements—Civil Service reform and public welfare regulation—the modern bureaucratic structure of most American government arose.

Today we rely on the bureaucratic structures erected at the end of the 19th century, which were greatly enlarged throughout the 20th century, to keep government "accountable" to the public. "Max Weber said that the great virtue of bureaucracy . . . was that it was an institutional method for applying general rules to specific cases, thereby making the actions of government fair and predictable," notes political scientist James Q. Wilson, explaining the rationale that animated bureaucracy's growth.<sup>30</sup>

## **Public Education and the Triumph of Bureaucracy**

In general, the development of accountability in American education—both to prevent malfeasance and to enforce performance standards—coincided with broader governmental trends. Education over the decades grew ever more regulated and bureaucratic. Unfortunately, from about 1830 to 1990, that produced one dominant system: increasingly monolithic public schools.

As mentioned, neither education nor most other American governance started out laden with bureaucracy. Until about the middle of

the 19th century, education was delivered under the same *laissez faire* structure that characterized other American governance. As education professors Bruce Cooper, Lance Fusarelli, and E. Vance Randall note, from the colonial period until about 1830, American education was “highly decentralized, unstructured, and very diverse. There was no system and governance was personal, local, and diffuse.”<sup>31</sup>

By 1830, however, American schools were being affected by the same social and demographic transformations that were starting to reshape many other aspects of American life: immigration was on the rise, and the industrial revolution was slowly making America into a more urban nation. Of course, those trends escalated gradually, as did the change to bureaucratic, centralized education, a trend driven by Horace Mann’s common school movement. Mann expected common schools, described by Cooper, Fusarelli, and Vance as “a state-sponsored, state-controlled system of schools attended by all,” to improve public education by standardizing it and making it systematic. Essential to the working of such a system was bureaucracy, which, according to Cooper, Fusarelli, and Vance, Mann saw as “the only mechanism that could efficiently raise education and schools above the fray of petty politics and properly socialize the young.”<sup>32</sup>

Bureaucratizing the delivery and quality control of education was intended to establish efficient processes for delivering education to large, diverse student populations. It was supposed to enable “experts,” rather than laymen, to control what, when, where, and how students were taught, in accordance with what their expertise dictated was best. “The progressive education movement, . . .” writes historian Diane Ravitch in *Left Back: A Century of Battles over School Reform*, “wanted to curb the influence of laymen, especially in poor and immigrant neighborhoods, in decision making about the schools. Toward these ends, progressive reformers created centralized school bureaucracies and civil service systems in urban districts that minimized lay participation in education policy.”<sup>33</sup>

As the progressive movement established greater and greater control over education, the system became increasingly centralized, a seemingly inevitable trend, given the top-down nature of progressivism. As Ravitch notes, by the 1920s centralized, hierarchically controlled organizations came to be thought of as essential for “modern” schooling.<sup>34</sup>

Centralization came in two forms: placing power over schools and districts in the hands of a few experts and absorbing small schools and districts into increasingly larger units. By the late 1950s, the latter movement was being pushed most visibly by Harvard University president James B. Conant, who sought to replace small schools with gigantic institutions able to produce financial economies of scale and also, according to Ravitch, “put professionals in control and minimized lay interference.”<sup>35</sup> The result: between the 1937–38 school year, the earliest for which the National Center for Education Statistics has data, and the most recent year, 2000–01, the number of public school districts in the United States decreased from 119,001 to 14,859. Similarly, the total number of public schools dropped from 245,941 in 1931–32 to 93,273 in 2000–01.<sup>36</sup>

Throughout that period, districts and states established uniform rules for everything from teacher certification and hiring to curricula<sup>37</sup> to bias and sensitivity requirements.<sup>38</sup> They also vastly increased the layers of administration and bureaucratic oversight in ongoing efforts to root out corruption and make the system work.<sup>39</sup>

## Bureaucracy Fails

Employing compliance-based bureaucratic mechanisms to contain corruption seems logical: lay out rules that prescribe what can and cannot be done and seek out and punish those who violate them. Compliance-based accountability’s first-blush logic notwithstanding, significant evidence demonstrates that large bureaucratic systems not only often fail to prevent corruption, they actually

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foster it. In addition, public accountability has inflicted two additional problems on American education: paralyzing inefficiency and widespread academic failure.

So while opponents of school choice such as the National Education Association argue that “vouchers undermine accountability for public funds,”<sup>40</sup> or that vouchers fail to protect “individuals who use the tax-funded program,”<sup>41</sup> as the National School Boards Association asserts, they miss the defects crippling the bureaucratic system they favor. We now look at each defect in detail.

### **Corruption**

On April 23, 2003, the *Palm Beach Post* ran two of its first reports on the trials and tribulations of school choice in Florida, a series that would total more than 130 news stories, editorials, and analyses by August 2004.<sup>42</sup> During roughly that same period, education news from around the country revealed that traditional public school districts, even old districts that in some cases had had more than a century to perfect bureaucratic accountability, saw accountability failures often far more egregious than those perpetrated through Florida's choice programs. Consider some parallel incidents:

- Revelations that a Miami-Dade private school cashed checks for 18 voucher students who'd transferred to public schools and received payments for 44 new voucher students even after the state discovered the problem, were said by the *Post* to add “fuel to the debate over voucher ‘accountability.’”<sup>43</sup> Similarly volatile was the Scottsdale, Arizona, situation in which an elementary school principal kept departed students on school rolls long after they'd left, in order to collect extra state funding.<sup>44</sup>
- In Florida, money from corporations participating in the state's Corporate Income Tax Credit Scholarship Program went to a man who used it for his own enrichment, rather than student vouchers. He was eventually arrested and charged with tak-

ing more than \$268,000. To the *Post*, it was one of “all kinds of abuse” perpetrated by voucher schools.<sup>45</sup> But it was nothing compared with the discoveries that D.C. public schools had hemorrhaged about \$1 million in wasteful spending in 2003;<sup>46</sup> New York City had been losing between \$8 million and \$10 million a year on bad food contracts for many years;<sup>47</sup> Fort Worth, Texas, schools had been defrauded out of about \$10 million by a concrete vendor;<sup>48</sup> the school superintendent for the entire state of Georgia had allegedly stolen about half a million dollars from Peach State taxpayers, about \$9,000 of which she used to get a face-lift; and school officials in wealthy Roslyn, New York, had been embezzling funds for years, an amount a recent report tallied at more than \$11 million spent on such extravagances as new luxury cars and trips on the Concorde.<sup>49</sup>

- The *Post* published allegations by a state whistleblower that an SFO had, among other irregularities, requested “kickbacks”<sup>50</sup> from voucher-taking schools.<sup>51</sup> During the same time, kickback schemes between vendors or favor seekers and district-level officials involving millions of dollars were discovered in Fort Worth, Texas,<sup>52</sup> and Michigan.<sup>53</sup>
- In an editorial headlined “Newest Voucher Scandal: No Check on Child Abuse,” the *Post* lambasted school choice because a man who had been accused of child abuse, charges against whom had been dropped, was hired as the director of a private school that taught voucher students. The editorial intoned: “Voucher schools have perpetrated all kinds of abuse. But child abuse should be going too far, even for die-hard voucher advocates.”<sup>54</sup> But failures to safeguard against abusers in public schools are rampant: in Texas, the *Beaumont Enterprise* ran a story headlined “Background Checks on Prospective Employees Do Have Limits,” in which it explained that background checks required by law often fail to screen out dangerous job applicants, such

as a band director accused of assaulting at least two students;<sup>55</sup> the *New York Times* reported that the New York City Department of Education failed to conduct required background checks on drivers of disabled children, and 25 drivers turned out to have criminal records;<sup>56</sup> the *Detroit News* explained that the state failed to properly check school employees and found that “as late as the 2001–02 school year, 41 people, including 40 teachers” had unreported criminal records;<sup>57</sup> and the *Orlando Sentinel* reported the arrest of a special education teacher accused of beating autistic children in South Seminole Middle School in Sanford, Florida, even though the district had investigated her for abuse four years earlier.<sup>58</sup>

Clearly, Florida’s school choice programs had no monopoly on corruption during the period of the *Post’s* investigation; almost every allegation was mirrored in public districts across the country. Those, however, are just snapshots frozen in time, offering little insight into how corruption has been dealt with over the long run. Examining how corruption and anti-corruption initiatives have changed over time is vital to determining whether examples of malfeasance such as those noted above are aberrations or permanent bureaucratic afflictions.

Surprisingly, almost no comprehensive studies of corruption in American education exist. That changed a little in 2004, however, when criminal justice professor Lydia Segal released *Battling Corruption in America’s Public Schools*, which examines corruption and bureaucracy in the country’s largest public school districts, especially those of New York City, Los Angeles, and Chicago. Segal’s motivation for writing the book is telling:

After graduating from Harvard Law School, I interned in the Manhattan District Attorney’s Office for Edward Stancik, then head of the Rackets Bureau there. A short time later, as tales of public school jobs in New York City being sold

for sex and cash filled the airwaves, Mayor David Dinkins appointed Stancik . . . to investigate school fraud and make recommendations for systemic reform. When Stancik asked me to join his team, I jumped at the chance. . . .

On one side of this underworld were people like some local board members who transformed their districts into patronage mills, handing out jobs and contracts to friends, lovers, and campaign workers. These board members, who referred to themselves as *godfathers* and *godmothers*, talked primarily about *making deals* and getting *pieces*, or patronage hires. Words such as *children* and *education* were not part of their vocabulary except insofar as they could be exploited as a source of patronage, power, or money.

On the other side were principals and administrators who furtively colluded to break the cumbersome school regulations and union contracts that prevented them from doing their jobs effectively.<sup>59</sup>

Despite all the rules against misconduct accumulated since the progressive, anti-Tammany days, during her investigations of New York City’s schools Segal found that the system was still plagued with corruption. Her investigations of other large urban districts were just as disheartening:

In New York City, decades of law enforcement investigations, city and state audits, political commission reports, grand jury reports, citizen group studies, and media exposés paint a portrait of a school system that has been afflicted by wrongs: theft, extortion, political patronage, nepotism, bribery, fraud, and even alleged murders and suicides. Investigations of other large urban school systems, including Chicago, Detroit, Los Angeles, Washington, D.C., Jersey City, and Newark, have revealed similar abuses.<sup>60</sup>

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## Corruption in public schools, in spite of public accountability, is commonplace.

That should not be surprising: As the public school scandals constantly erupting around the country make clear, corruption in public schools, in spite of public accountability, is commonplace. What might be surprising, though, is Segal's next finding: bureaucratic anti-corruption rules actually *enable* malfeasance, while undermining the ability of those truly dedicated to education to get their jobs done. She continues:

Corruption is in a sense a symptom of something else gone awry. The underlying illness, moreover, causes not just corruption in the modern sense of illegality but also corruption in the broader, classical sense of the term *corruptio*, meaning perversion of purpose. . . . The root of the problem lies in the ever-tighter traditional corruption controls—the layers of bureaucratic oversight; the detailed standard operating procedures, rules, and regulations; and the over-specification of money—that schools imposed on their operations over decades. These control mechanisms were supposed to ensure against fraud and waste. But as urban schools grew larger, they have [*sic*] actually eroded oversight, discouraged managers from focusing on performance, and made it so difficult to do business with districts that employees and contractors have sometimes had to seek “creative” or illicit ways to get their jobs done.<sup>61</sup>

Stories from St. Louis and New York City, as well as a comparison of corruption in bureaucratic and relatively nonbureaucratic districts, all bear out the accuracy of Segal's conclusions.

In June 2003 St. Louis brought a private firm in to manage the city's corrupt, failing school system because, according to the *St. Louis Post-Dispatch*, “they would be outsiders, capable of making the tough decisions and heading home.” But actually effecting change would likely be much harder than advertised, because, continued the *Post-Dispatch*, “running

a school district is not as simple as running a business. The reality is that patronage and politics have been institutionalized in St. Louis and many other urban school districts.”<sup>62</sup>

Similarly, the *New York Times* reported that New York City schools likely lost millions of dollars in bad, possibly corrupt food deals because the complexity of the system enables miscreants to deflect blame and hide: “Education officials either denied knowing about it or said they were not responsible, pointing the finger at other divisions in the department.”<sup>63</sup>

Finally, in *Making Schools Work*, University of California, Los Angeles, management professor William Ouchi examines school districts that have heavy bureaucratic structures, including those of New York and Chicago, and districts that give their schools significant autonomy, including those of Edmonton, Alberta, and Seattle, Washington. What Ouchi discovers is telling. In the districts in which schools have the most autonomy, the incidence of waste, fraud, or corruption, such as teachers and administrators stealing district funds, is the lowest, and the districts with “the most centralization and the largest central staffs . . . have the most, not the fewest, problems with incompetence and dishonesty.”<sup>64</sup>

### Inefficiency

Almost daily the news reminds us not only that bureaucratic government is failing to keep our public schools “honest and accountable” but also that the schools are being rendered extremely inefficient by it. To an extent, that's by design. As James Q. Wilson explains in his book *Bureaucracy*, it's just part of the price we pay to be protected from graft and incompetence. “A government that is slow, . . .” he writes, “but is honest and accountable in its actions and properly responsive to worthy constituencies may be a very efficient government, *if* we measure efficiency in the large by taking into account *all* of the valued outputs.”<sup>65</sup> Unfortunately, the inefficiency our schools are plagued with is extremely debilitating, and the kind of “valued outputs” Wilson says we exchange for efficiency—in the case of educa-

tion, corruption-free, effective schools—never materialize.

Again, in roughly the same period as the *Palm Beach Post* was attacking Florida’s private school choice programs, there were abundant signs that traditional public school systems were suffering mightily from bureaucratic incompetence and inefficiency, which had serious implications for schools:

- A report released in September 2003 found that 42 percent of campuses in the Los Angeles Unified School District failed health and safety inspections.<sup>66</sup>
- In November 2003 the *New York Daily News* reported, “Highly paid educrats at the Education Department shocked the city’s 80,000 teachers this week by handing out barely literate curriculum guides riddled with grammatical gaffes, spelling errors and misused words.” The guides, among other things, urged teachers to “crate a balance bean with masking tape” and identify “student strengths and weaknesses.” One guide explained that George Orwell’s *Animal Farm* is a story about the importance of rules. “Educators were quick to point out that the error-ridden lesson plans came straight from the top,” explained the *Daily News*, “and at a time when fewer than half of city students can read at grade level.”<sup>67</sup>
- In Detroit thousands of children are going without textbooks as a result of “computer glitches” in the inventory system, according to the *Detroit Free Press*. A sidebar to the *Free Press*’s article chronicles textbook supply breakdowns since 1985, with district excuses ranging from “ordering errors” to “orders must go through 39 steps, requiring mounds of paperwork.”<sup>68</sup>
- An independent auditor in Washington, D.C., found in an examination of random samples of 59 student records at each of 16 schools that hundreds of files were in disarray and many appeared to have been tampered with, according to the *Washington Post*. Whether or not tam-

pering occurred was impossible to prove, however, “because of the disorganized state of the records.” Said school board president Peggy Cooper Cafritz: “What’s crystal clear is that the high schools haven’t been doing their jobs in terms of student records at all. . . . It’s rampant throughout the system.”<sup>69</sup>

- Again in D.C., the *Washington Times* reported that when DCPS superintendent Paul L. Vance learned that the school district had a \$65 million deficit and 640 excess employees in October 2003, he simply “blamed the ‘system,’ saying, the audit merely revealed ‘part of the system’s financial conditions that have to be cleared up.’”<sup>70</sup>
- A girl received progress reports for numerous classes at Sherwood High School in Montgomery County, Maryland, last year, according to the *Washington Times*. She received two A’s, an “NC” for a noncredit class, and one incomplete. The only problem: the girl had never attended the school.<sup>71</sup>
- In early November 2004, 300 pounds of discarded student records, which contained private information about former New York City public school students’ medical histories as well as their full names and Social Security numbers, were discovered dumped on a Bronx Street. According to the *New York Daily News*, an Education Department statement read, “This violates clear department policy and should not have happened.”<sup>72</sup>

Some of the worst bureaucratic failures—from ordering millions of dollars in unnecessary food to allowing individuals with criminal pasts to transport special education children to school to carelessly throwing out thousands of records with names and Social Security numbers—have occurred in New York City, despite the school system’s voluminous guidelines and regulations. Indeed, Common Good, a bipartisan organization seeking to roll back the intrusion of law in American society, recently completed an exhaustive assessment of every rule

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**The bureaucratic structures under which schools labor can be correlated with academic performance, and schools with the most onerous bureaucracy tend to do the worst.**

and regulation governing a typical New York City high school and found that the schools labor under “more than 60 separate sources of laws and regulations, with thousands and thousands of discrete obligations.” So strict are the rules and processes that Common Good estimates an administrator most follow more than 66 steps, in a process that typically takes 105 days, to suspend a disruptive student and must adhere to an 83-step process that can take longer than a year to fire an inept teacher. Sources of regulation identified by Common Good include

- the New York State education law, which is 846 pages long;
- 720 pages of regulations issued by the New York State commissioner of education;
- 15,062 decisions—contained in 43 volumes—made by the New York State commissioner of education in response to appeals of decisions made by education professionals;
- the New York City teachers’ contract, which is 204 pages long, with an additional 105-page memorandum of understanding;
- the No Child Left Behind Act, which is 690 pages long; and
- more than 200 pages of regulations (not including case law) controlling the discipline of students.<sup>73</sup>

Given the morass of rules and regulations to which New York City high schools must adhere, it’s little wonder that the city’s schools seem incapable of efficient operation.

#### **Learning**

Regulations governing almost everything a school can do have failed to stop fraud, waste, and abuse but have rendered school districts cripplingly inefficient. As a result, “ultimately, it’s the achievement potential of our students that suffers,” explains Paul Houston, executive director of the American Association of School Administrators.<sup>74</sup>

Examining trends in overall student perfor-

mance on National Assessment of Educational Progress exams and the Scholastic Aptitude Test shows that academic stagnation has accompanied bureaucratization of education for at least 30 years. Since around 1970, scores on the SAT have dropped, and those on NAEP math, reading, and science have shown little improvement. Especially poor have been the results for high school students. Over the last roughly 30 years, scores for 17-year-olds have barely improved at all in math and reading, and they have dropped in science.<sup>75</sup> That’s despite the fact that, according to the U.S. Department of Education, inflation-adjusted per pupil expenditures nearly tripled between 1965 and 2003,<sup>76</sup> and the pupil-to-teacher ratio in American public schools, according to the National Center for Education Statistics, dropped from 22.3 in 1970 to 15.9 in 2001.<sup>77</sup>

Many factors are likely at play in the sorry performance of American schools since 1970, and bureaucracy is surely one of them. University of California, Berkeley, professor Robert A. Kagan provides insight into why that is probable: “In the 1970s enforcement officials and regulated enterprises both reported an increase in strict rule-application, formal citation, and penalties,” and a marked increase in “regulatory unreasonableness.” He continues, “There are obvious parallels between the evolution of [such] protective regulation and the growth of legal controls over public schools.”<sup>78</sup>

Education researchers John Chubb and Terry Moe clearly identified the connection between bureaucracy and performance. As they explained in their book *Politics, Markets and America’s Schools*, the bureaucratic structures under which schools labor can be correlated with academic performance, and schools with the most onerous bureaucracy tend to do the worst.

Like many observers of contemporary American education, we believe that bureaucratization of educational governance and administration has simply gone too far. Many public school systems seem to have become so bureaucratized that their schools cannot possi-

bly develop clear objectives and high academic expectations or attract the kinds of principals or teachers that are required for effective performance. . . . The data that we examined in this chapter are consistent with our expectations. Autonomy has the strongest influence on the overall quality of school organization of any factor that we examined. Bureaucracy is unambiguously bad for school organization.<sup>79</sup>

William Ouchi takes a practical look at this in *Making Schools Work*, a book based on visits to, and analyses of, hundreds of schools in a variety of different systems ranging from Edmonton, Alberta, to the three largest Catholic school systems in the United States to the New York City and Los Angeles school systems to six independent schools. What Ouchi concludes from his analysis corroborates the assessment of Chubb and Moe.

An entrepreneur is the opposite of a bureaucrat. Bureaucrats, especially good ones, know the rules backwards and forwards and always follow them. In a routine, stable situation, that's a good thing. When confronted with the nonroutine, though, bureaucrats cannot act until a higher-up gives them a new rule that they can follow. In schools, where each day brings new and previously unknown situations, bureaucracy is deadly.<sup>80</sup>

Perhaps the most convincing testimonials about the crippling effect of bureaucracy on schools come from people who actually work in them—superintendents and principals. According to *Rolling Up Their Sleeves: Superintendents and Principals Talk about What's Needed to Fix Public Schools*, a report from the research organization Public Agenda, 82 percent of superintendents and 49 percent of principals identified “politics and bureaucracy” as the number-one reason colleagues left their field. As one focus group member told the researchers, “The ‘system,’ whether at the local, district, state or federal level, has little sense of what school life is, and each level cre-

ates hurdles to meeting the needs of children and communities.”<sup>81</sup>

## The Solution: School Choice

So the sort of public accountability the *Palm Beach Post* accused school choice in Florida of lacking actually contributes to, rather than prevents, fraud, waste, and abuse and often keeps the worst districts in permanently bad shape. The solution to the accountability problem, ironically, is the very thing defenders of public accountability most despise: school choice. As Chubb and Moe discovered, “The most important prerequisite for the emergence of effective school characteristics is school autonomy, especially from bureaucratic influence.” That was a finding that led them to recommend “a wholly different [education] system—one built around school autonomy and student choice.”<sup>82</sup>

In their research, Chubb and Moe analyzed the changes in scores on five tests administered for the High School and Beyond survey, which covered both public and private schools. They looked most closely at how those scores correlated with school organization. “Organization” was assessed using four major dimensions: goals, leadership, personnel, and practice. Chubb and Moe found that no single dimension was dominant<sup>83</sup> but that altogether “the freer schools are from external control—the more autonomous, the less subject to bureaucratic constraint—the more likely they are to have efficient organizations.” The hallmarks of such organizations are “strong leadership, clear and ambitious goals, strong academic programs, teacher professionalism, shared influence, and staff harmony, among other things.”<sup>84</sup>

Not surprisingly, the private schools in the HSB data tended to have both much better organization and significantly better performance. “Effective school characteristics are promoted much more successfully by market control than by direct democratic control,” conclude Chubb and Moe. “The kinds of qualities that contemporary school reformers

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would like public schools to develop, private schools have developed without external reform at all.”<sup>85</sup>

Chubb and Moe find that the only public schools with autonomy comparable to that of private schools are those outside urban areas, which not coincidentally tend to serve well-to-do families. Conversely, the schools most in need of immediate, effective reform—failing inner-city schools—have the least autonomy.<sup>86</sup> The implications of that are grave, because we heap the most bureaucracy on the latter schools, usually in efforts to help them. As the authors explain:

When schools are plagued by problems—poor academic performance, drugs, violence, absenteeism, high dropout rates—public officials come under intense pressure to take corrective action in the form of new policies. Much the same happens when the schools’ problems are seen to be anchored in more fundamental problems that beset their student populations—economic hardship, broken families, poor nutrition, physical handicaps, language difficulties. Here there is pressure for governmental programs that address the educational symptoms of these problems, usually by requiring schools to provide certain kinds of services.<sup>87</sup>

One need look no further than the federal No Child Left Behind Act (NCLB) to see that when schools don’t meet standards, the “cure” involves more bureaucracy. NCLB mandates that all states set learning standards for reading, math, and science and requires that students take tests assessing their knowledge against those standards. That necessitates that bureaucracy be augmented: standards must be designed and disseminated, and tests must be written, administered, and graded. NCLB also imposes new teacher qualification standards, requires that states seek out and approve organizations to provide tutoring to struggling children, and sets detailed rules for many other school and district functions.

Unfortunately, the worst damage is inflicted on the schools and districts whose students fail the NCLB-mandated tests and are designated as “needing improvement,” or worse. Depending on how long a school has failed to achieve what NCLB calls “Adequate Yearly Progress”—essentially, bringing enough kids in numerous populations up to “proficiency” on state tests each year—its district could be required to offer students transfer options to other schools within the district, offer tutoring, and draw up plans for improving or completely restructuring the school, all adding to the weight of bureaucratic compliance.<sup>88</sup>

Chubb and Moe’s prescription for fixing American education is fundamentally different from reforms like NCLB that graft new layers of bureaucratic rules onto the already smothered system. Rather than more government control of schools, Chubb and Moe call for much less, with the choices of parents, rather than rules and regulations, providing the primary control.<sup>89</sup> Critically, they add that if choice is to work it must not be added to traditional reforms like increased testing or class-size reduction; it “must be adopted without these reforms, since the latter are predicated on democratic control and are implemented using bureaucratic means.”<sup>90</sup>

Choice must be a single, stand-alone reform because it completely revolutionizes how education is delivered, making a system controlled by government into one controlled by consumers. But keep it as one among many reforms, the rest of which maintain the compliance-driven government system, and the bureaucracy will eventually strip choice schools of their autonomy. Using as an example the East Harlem, New York, school district, which in the 1970s and 1980s granted its schools significant autonomy and saw great improvements in student achievement as a result, Chubb and Moe illustrate the need to make liberating schools a stand-alone reform. “A . . . scandal at the district level . . . prompted city officials to initiate a shakeup of district personnel,” they write. “The new leadership appears to be intent on reasserting certain district controls and moving toward more tradi-

tional forms of governance and administration.” The schools’ biggest problem, then, is that “what authority they have been privileged to exercise to this point has been delegated to them by their superiors—who have the right to take it back.”<sup>91</sup>

## Quality Control in an Education Market

Chubb and Moe clearly believe that choice holds the solution to the academic problems that plague America’s public schools. But how will it furnish the quality control the United States currently seeks to obtain through bureaucratic mechanisms? In *Public Policy and the Quality of Life: Market Incentives versus Government Planning*, Florida State University economics professor Randall Holcombe answers that question and shows how market-based accountability can and does exceed the level of accountability provided in areas traditionally thought controllable only by government.<sup>92</sup>

Free-market accountability, though more difficult to identify than written rules and regulations, works in a fairly simple way. Education providers are accountable to parents because only those firms that provide what consumers want at the prices they are willing to pay can stay in business. Firms that fail to produce the quality consumers want at the price they are willing to pay face the ultimate sanction, extinction.

Among its many benefits, that dynamic can foster the creation of private regulatory bodies. Such regulatory organizations might charge producers to have their products “certified” as meeting the regulatory firm’s standards. The value of that certification would rise as consumers came more and more to respect it. All three participants—regulators, producers, and consumers—would win from such a free-market arrangement, and the ineffective mechanisms of bureaucratic accountability could be dispensed with. Holcombe looks at two such private regulatory organizations: Best Western motels and Underwriters Laboratories.

Most people probably think motels bearing the Best Western name are part of a chain. Not so, Holcombe explains: Best Western doesn’t actually own any motels; instead, motels that meet the company’s standards pay a fee to display the Best Western logo, signifying their quality. Essentially, Best Western is a private regulatory body.<sup>93</sup>

Of course, Holcombe concedes, “staying at a nice motel is a matter of comfort but probably not a matter of life and death.”<sup>94</sup> But ensuring the safety of products and services that could have life-threatening defects, such as automobiles or drugs, is considered one of the most important roles of regulation, one that many people feel can be entrusted only to government. However, the private sector also has a regulatory organization for those kinds of products: Underwriters Laboratories, issuer of the familiar circled “UL” stickers found on countless electronic devices, including many that, if functioning improperly, could threaten life and limb. “Underwriters Laboratories makes money because the firms that bring products to it want their products to be regulated. The expense of the regulatory process is paid for because consumers are willing to pay more for the UL seal of approval.”<sup>95</sup>

So there are already private regulatory structures helping consumers identify services and products that meet high standards. Such examples are, in fact, ubiquitous if one accepts franchises and brand names as private-sector tools for maintaining quality standards. If one likes Coca-Cola, for instance, one can expect to go almost anywhere in the United States and be able to buy a Coca-Cola that is as good as it is anywhere else. Ditto fast food restaurants, movie theaters, bicycles, and on and on. And we are now able to add schools to the list.

Thanks to charter schools and educational choice programs, schools too are coming to be regulated through market mechanisms. Of course, for the most part schools are still regulated by government because more than 88 percent<sup>96</sup> of students attend traditional public schools, the clientele of which is captive, so the schools need not prove their quality to prospective consumers. But charter and

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other choice schools are different, because they must be chosen by parents to survive.

Perhaps the best known “brand name” in schooling is KIPP, the Knowledge Is Power Program, which has become one of the most highly respected names in education. KIPP schools are the brainchild of David Levin and Michael Feinberg, who in 1994 created a model for middle schools featuring longer days, school on Saturdays, uniforms, student contracts, an omnipresent focus on college preparation, and discipline<sup>97</sup> that is now standard in 38 schools across the nation serving more than 6,000 students.<sup>98</sup> As reporter Meredith May wrote in the *San Francisco Chronicle* in 2003, the success of KIPP schools is clear, and their reputation is helping them to replicate quickly, to the benefit of ever greater numbers of poor and struggling students. “While most KIPP middle-schoolers enroll at a third-grade reading level, studies show they reach their correct grade level in a year, and read above their grade level after two years,” May reported. “Much like a chain store, KIPP is replicating by creating its own recognizable brand of education.”<sup>99</sup>

While KIPP might be the best known of the emerging names in education, it is hardly alone in offering nongovernmental quality control for schools. Parents interested in having their children educated using the methods created by Maria Montessori, for instance, can seek out schools that advertise themselves as Montessori schools and, if the schools are members of the American Montessori Society, be assured that the schools adhere to the Montessori philosophy of student-directed, whole child education.<sup>100</sup> The same goes for Waldorf schools, which in the United States are authorized to bear that name only if they are members of the Association of Waldorf Schools of North America.<sup>101</sup>

Brand naming isn’t permanent; it can be taken away if a school no longer conforms to brand standards. Famed educator Marva Collins, who created a curriculum credited with turning around struggling Westside Preparatory School in Chicago, entered into contracts to allow schools employing her cur-

riculum to use her name. But when many of those schools deviated from the curriculum and quality her name represents, Collins forced them to remove it, most recently from the former Marva Collins Preparatory School in Milwaukee.<sup>102</sup>

Despite the benefits of private regulatory mechanisms, choice-based accountability is ultimately rooted in the choice of individual parents who choose to pay for the schools that produce the outcomes they desire for their children and leave behind those that do not. That is a phenomenon foreign to traditional public schools, because children are assigned to those schools on the basis of where they live, and “choice” can usually be exercised only by relocating to an entirely different district.

Perhaps the best opportunity to observe supply-and-demand accountability at work is in the nation’s 3,000 plus charter schools,<sup>103</sup> which, though far from the market—and hence market-accountability—ideal, are the most common choice schools across the country. Charters have demonstrated that schools that don’t do an adequate job of meeting parents’ needs can, and do, go out of business.

For years, the Center for Education Reform has tracked the births and deaths of charter schools across the country. According to CER’s figures, between the 1992–93 school year and January 2004, more than 311 charter schools closed their doors.<sup>104</sup> Many of those closures, it should be noted, did not occur because of supply and demand—charters have often been closed because of inability to find adequate facilities, failure to fulfill provisions of their charters, or several other “nonmarket” causes—but many did, in fact, close because parents were not interested in their product.

Enrollment shortfalls are identified as the reason for nearly 50 of the school closures CER lists in *Charter Schools Today*.<sup>105</sup> That number might not seem very high, but it shows that choice-based accountability can kick in. And charters have a significantly larger closure rate than traditional public schools, which typically operate no matter how poorly they perform unless a district experiences massive out-migration.

## Even in Choice Programs, Government Is the Problem

Despite the great potential to provide accountable, efficient, effective schooling using the free market, government continues to dominate education, including currently existing choice systems. In fact, in almost every case the fraud, waste, and abuse that have been perpetrated in school choice programs like Florida's have been due to government, not market, failure. So, when critics of choice argue that corruption in Florida's choice programs is a symptom of a "free market" approach to accountability," as does the National School Board Association's Tom Hutton,<sup>106</sup> or that proponents of choice have asserted that "the free market system will take care of itself" to cure Florida's scandals, as *Palm Beach Post* reporter Kimberly Miller has written,<sup>107</sup> they are mistaken. In the short term, of course, malfeasance can occur anywhere—people constantly do bad things, and no accountability mechanism can provide instantaneous protection from them. But over time choice provides the best way to deal with corruption.

Consider the whistleblower who was moved to a different post and eventually fired from the Florida Department of Education. He was punished, many people believe, for reporting that a department employee was altering letters required of private schools that wished to receive voucher students. According to the *Post*, the letters had to contain either proof of a school's insurance policy or a letter of "fiscal soundness" from an accountant.<sup>108</sup>

Clearly, that was not a failure of the free market. In a truly free-market system, letters of fiscal soundness would be unnecessary, because schools that were not fiscally sound would either go out of business or adjust their business practices until they were financially sound. The market would either weed out such institutions or force them to improve.

The requirement of proof of fiscal soundness in order to enroll in a government program is bureaucratic accountability, based on

formal rules and regulations. Because taxpayer money is being used, legislators feel that government must take measures to guard against money appearing to go to unsound schools. But, as demonstrated by fiscal failure uncovered in districts such as Baltimore, Maryland, which in early 2004 registered a \$58 million deficit,<sup>109</sup> and Detroit, Michigan, which has accumulated a \$198 million deficit,<sup>110</sup> even in traditional schools such accountability often fails miserably.

Next, consider the two cases of scholarship-financing organizations accused of misusing funds. In one, bankrupt correspondence school and scholarship-financing organization operator Daniel Isenhour was accused of taking \$268,000 in scholarship funds and keeping it for himself.<sup>111</sup> In the other, the largest SFO, FloridaChild, was found to have improperly charged families application fees and accepted millions in transfer fees from other SFOs.<sup>112</sup>

Again, those scandals were made possible not by free markets but by the fact that the Florida corporate scholarship program is a government program. Florida, arguably, is constrained from giving money directly to parents by the state's constitution and therefore had to erect a system that uses "middlemen"—SFOs—that take corporate money and transform it into scholarships. In a truly free market, parents would deal directly with schools, and middlemen would be unnecessary.

That is not to say that in a market no parents or school operators would ever be unscrupulous. But, at the very least, the roundabout funding scheme of Florida's corporate scholarship program adds a layer to the exchange of money for education that would not exist in the free market, increasing the potential for misdeeds. Isenhour never would have been involved had that not been the case.

But imagine that Isenhour had operated a school rather than an SFO. If he hadn't been providing educational services that parents valued, he would have lost his students to schools that did. Indeed, his for-profit correspondence school went bankrupt in March 2003.<sup>113</sup>

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## Accountability to Parents, Not Bureaucrats

The work of researchers such as Holcombe, Segal, and Chubb and Moe demonstrates that the free market is far superior to government at controlling educational quality and guarding against corruption. Leaving education entirely to the market would likely provide the best, most efficient educational system possible.

However, as long as Americans believe that government must guarantee that all children receive at least a minimum level of schooling, education will likely never be delivered entirely by the free market, and government will be involved to some extent. And once government gets involved, bureaucracy is inevitable, which raises the question: How can government guarantee a basic level of education while maximizing the effectiveness, accountability, and efficiency possible only in the free market?

The cornerstone of free-market accountability is that those who benefit from a service pay for it, and those who provide the service rely on those payments to exist and thrive. At its core, then, is the very simple dynamic identified earlier: people will pay for schooling that meets their needs and desires, and the schools that offer the education that best meets those desires, at a price people are willing to pay, will survive. In contrast, a school that fails to deliver the education consumers want—whether as a result of incompetence, malfeasance, or wastefulness—will perish.

Given what we know about free-market versus bureaucratic accountability, it seems clear that we should reshape our education system so that parental choice is its foundation. That would likely mean vouchers or tax credit programs for the poor and autonomy for the rich. More fundamentally, it would mean changing the conception of public education from one based on funding *schools* to one based on funding *students*, whose parents would select their schools. Supply and demand could then go to work.

To optimize supply-and-demand-driven accountability, even the poor should pay something for their children's education. Recall that the key to accountability in choice is that consumers have money of their own at stake when they purchase a product or service. That provides extra impetus to seek out the best providers they can find. As Andrew Coulson observed in *Market Education: The Untold History*:

What we pay for, we pay attention to. What we get for free, we feel free to ignore. To the extent that government scholarships defray the cost of tuition, they dispense with parental financial responsibility . . . the requirement to contribute to the cost of their children's education is one of the greatest incentives for parents to take the time and care necessary to make wise decisions.<sup>114</sup>

To ensure that they have some financial stake in their children's education, poor parents should be required to pay a set percentage of the tuition charged by the schools their children attend. What that percentage should be is debatable, but with average tuition hovering around \$3,500 for private elementary schools and \$6,000 for private secondary schools,<sup>115</sup> 10 or 20 percent would probably not be unreasonable.

## Conclusion

When examples of fraud, waste, or abuse are uncovered in school choice programs, they typically set off firestorms of criticism from people who oppose educational freedom. Critics quickly hold up any example of malfeasance in choice schools as proof that the market can't provide the level of accountability supposedly guaranteed in public schools. But public schools' accountability, as has been demonstrated constantly in districts around the nation, is a myth. Worse, it's a myth whose propagation not only blinds people to the system's failure to control corruption but also

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ignores bureaucracy's disastrous toll on educational effectiveness. Ironically, though, there is a way to have both educational effectiveness and accountability, and it's the very thing people who oppose school choice most fear: true choice-based education.

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