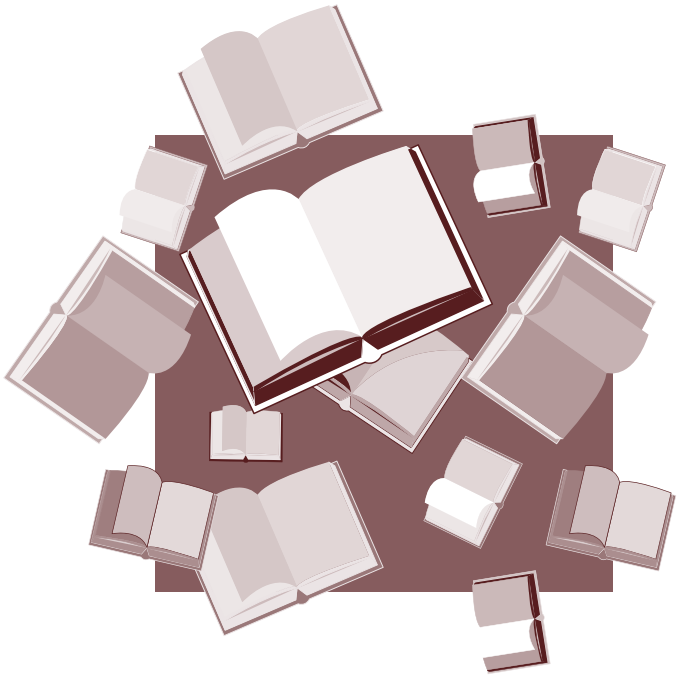
Education Commission of the States

Bringing To Life the School Choice and Restructuring Requirements of NCLB

Stimulating the Supply of New Choices for Families in Light of NCLB



The Challenge

Under the No Child Left Behind Act (NCLB), school districts are required to offer students who attend schools that do not make "adequate yearly progress" for two consecutive years the option to transfer to higher-performing schools in the district. But two years after NCLB was enacted, it appears only a small percentage of the students eligible to transfer are doing so.

A survey released in January 2004 by the Council of Great City Schools found that the total number of children moving to a different school remains relatively small at 2%, although it did document a threefold increase over the previous year.[i] This finding was echoed by a study released in May 2004 by the Citizen's Commission on Civil Rights. It found that among those districts that submitted complete data, 1.7% of eligible students transferred to higher-performing schools in the 2003-04 school year.[ii]

As the number of schools that must allow their students to transfer to another school under NCLB rises, and as more parents become aware of their options, there will likely be a considerable increase in the number of parents requesting transfers. These likely increases, however, will often occur in districts where, up to this point, only a fraction of those eligible for a transfer actually get a seat in a higher-performing school if they apply. Chicago, for example, had 270,757 students eligible to transfer in 2003-04, and 19,246 requested a switch. But the district only approved 1,097 transfers. Though several districts honored most or all transfer requests, many cited the lack of seats at higher-performing schools as a constraint.[iii]

Under NCLB, though, districts cannot use capacity problems as an excuse for not providing seats for students who wish to transfer. For these districts, and the states that oversee their progress, it is vitally important to look at stimulating the supply of new choices so interested families can exercise their rights to transfer. This policy brief sketches out the roles that states can play in the process.

Is There a Role for the State?

Providing transfer options is a district responsibility under NCLB. But since states are ultimately accountable for meeting the terms of NCLB (and, most importantly, for the quality of public education), it is worth considering whether states also have a role to play in stimulating the supply of new choices.

In the past, state departments of education have acted primarily as regulatory bodies. Once districts have complied with regulations involving accreditation, the number of days that school is in session, reporting procedures and the like, state departments have allocated both federal and state funds to them. In several cases, they also have provided technical assistance to low-performing schools and districts. They have not, however, been responsible for stimulating the supply of new schooling options. While most states have enacted charter school legislation that allows new schools to form, in most cases this allowance falls short of the state's playing a proactive role in stimulating supply.

Even though states have not historically taken on this role, they are uniquely qualified to do so. Because of their statewide reach and perspective, state departments and other state entities, such as governors' offices, are in a position to leverage their influence in several key areas:

- **Assessing needs.** Because most state education departments have invested heavily in the last few years in testing programs and in data management systems, they are in a strong position to

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[i] Michael Casserly, "Driving Change." *Education Next* 4, 3 (Summer 2004), p. 34.

[ii] Cynthia G. Brown, *Choosing Better Schools: A Report on Student Transfers Under the No Child Left Behind Act*, Report of the Citizens' Commission on Civil Rights (Washington, DC: Citizens' Commission on Civil Rights, 2004), p. 6.

[iii] Ibid, p. 41.

Authorizing New Authorizers

Colorado established a charter schools institute as a statewide authorizer of charter schools. Previously, local school boards were the sole sponsors of charter schools (though their decisions can be appealed to the state board of education). The institute's governing board has nine members – seven appointed by the governor (with the consent of the senate) and two by the commissioner of education. One interesting feature of the legislation: school boards can retain exclusive chartering authority if they can convince the state board they are willing authorizers who treat charter schools fairly and equitably. In other words, a school board can prevent the institute from issuing charters within its jurisdiction by meeting the legislation's standards for high-quality authorizing.

Idaho created a public charter school commission overseen by a seven-member, governor-appointed board. The commission can approve "virtual public charter schools" to serve students, perhaps from more than one district, using online technologies. It also can approve other charter schools that appeal their non-approval by local school boards.

Utah instituted a new state board with the power to issue charters statewide. The board has seven members appointed by the governor. Two must have "expertise in finance or small business management"; three are selected from a slate of at least six candidates nominated by Utah's charter schools; and two are appointed from a slate of at least four candidates nominated by the state board of education.

assess the statewide need for new options and to set priorities.

- **Creating a favorable environment.** State-level policies determine the environment in which new options are able to flourish – or not.
- **Attracting and developing new "supply."** States also can aggregate resources for recruitment and development of new options. This prevents individual districts from unnecessarily duplicating each other's efforts and makes possible multidistrict partnerships with providers of new school options.

Each of these areas is explored in more detail below.

Assess the Need for New Choices

There are several activities states can undertake in this area, including the following:

Documenting the level of demand and supply

An important first step that state-level policymakers are in a strong position to implement is analyzing statewide data to determine not only how many low-performing schools there are, but also how many students attend these schools. A second step is for the state to determine the current level of available seats in high-performing schools on a district-by-district basis. The state also can examine information about the capacity of higher-performing alternative and optional programs, such as charter schools, to accept transfer students.

Determining where excess demand is concentrated

From the above data, states will see patterns emerge that document where new options need to be created and what types of students they should target. Are there certain districts, certain areas of the state, certain categories of children (grade levels, special needs, etc.) that have large numbers of students who will have the option to transfer?

Projecting need for new "seats" and schools

Over time, data on supply and demand can be analyzed for trends that policymakers can use to predict future needs. In many states, for example, growing numbers of Hispanic immigrants have caused districts to invest much more heavily in English-as-a-second-language programs. Any planning around new options would need to take this growing population into account. Another variable to take into account is how much districts are doing themselves. Some districts are working proactively not only to improve student achievement, but also to expand the availability of options so all students are successful. In districts where this is not the case, there will be more of a need for the state to act.

Publishing this information widely

Having collected data on supply and demand, the state is in a position to get the word out. State lawmakers, community groups and potential providers of new schooling options should know where there is a need for more capacity. Widely available information also helps hold school districts accountable for doing their part to offer sufficient options.

Create a Favorable Environment for New Choices

Once a state has a handle on demand for and supply of options, the question naturally turns to how the state can help close existing gaps. It is unlikely the state will actually go out and operate new schools to meet the excess demand. Instead, the state's best

strategy is to create an *environment* in which new options are most likely to emerge and flourish.

Many states have already taken a step toward creating such an environment by establishing charter school legislation. In some of these states, the existing chartering mechanism may be sufficient to meet the excess demand for new options. In others, the state will need to consider ways to improve the chartering mechanism – as described below.

While charter schools are one natural way for states to create new options, states also can contract with providers to start and run new schools, or make it easier for districts to do so. This kind of contracting is "charter-like," in the sense that providers are selected according to some kind of rigorous process, given the legal authority to run their schools and held accountable for performance. The formal label "charter school" is less important than these underlying concepts.

How can states make sure they have well-functioning chartering and contracting mechanisms? Here two levers are considered: improving the statutory and regulatory framework, and improving the quality of authorizing and contracting.[iv]

Improving the statutory and regulatory framework

New options cannot flourish in an environment that discourages them. Different states have different regulatory and statutory barriers to increasing the supply of new options. All states should carefully consider what impedes the creation of such schools and take steps to remove these hurdles. In so doing, they should consider several possibilities.

- **Empower new charter authorizers.** For a new charter school to open, it needs a willing "authorizer" – an agency that grants it a charter and oversees it over time. So an initial question for state policymakers is whether there are enough willing authorizers in the state. States without charter laws and states with laws that allow only districts to issue charters may want to consider adding more entities to the list of potential authorizers. Potential nondistrict authorizers include state boards of education, mayors, city councils, universities, nonprofit organizations and special-purpose entities created specifically to be charter authorizers.
- **Lift caps on authorizing.** Many states have limits on how many charters an individual authorizer, a type of authorizer or authorizers as a group can grant. States should consider lifting these caps for authorizers who have successfully managed the application process and the oversight functions that are their primary responsibility, particularly in areas where there are likely to be a lot of students eligible for transfer. Colorado and California, for example, originally had caps on the number of schools that could open, but their legislatures removed these caps or allowed them to lapse as the charter population neared the limit.
- **Create/clarify authority to contract.** Issuing a charter is only one way to open up the opportunity for a new school to form. Another mechanism is for the state or district to contract with some outside entity to start one or more new schools. In some states, the ability of the state and districts to do this kind of contracting is well established. In others, states may need to amend existing law to make clear that contracting for the operation of new schools is allowable, as well as to set appropriate parameters on such contracting.
- **Ensure charter/contract schools have autonomy.** To entice providers to open up new options, the resulting schools must have the management authority to carry out their school designs effectively. If the new schools face all the same constraints that existing schools face, it is unlikely that many of them will form, thrive and offer true alternatives. Some basic public school laws and regulations, of course, should apply, such as

[iv] While this paper focuses on chartering and contracting as mechanisms for creating new options, they are not the only possible mechanisms. Another mechanism worthy of mention is interdistrict transfers. Many low-performing school districts are surrounded by higher-performing ones. While many of these are truly full, not all of them are. NCLB does not compel these neighboring districts to accept transferring students, but states can take a proactive role in encouraging such acceptances; for example, by guaranteeing sufficient funding follows transferring students and ensuring receiving districts' AYP status under NCLB is not adversely affected in the short term.

Providing Start-Up Funds

In **California**, a new revolving loan fund allows charter schools to receive loans of up to $250,000 and have up to five years to repay them.

An **Illinois** statute authorizes the state to provide new charter schools with $125 per pupil for their first three years operation. A 300-student school could garner $112,500 through this mechanism.

health, safety and nondiscrimination, along with participation in the state's testing and accountability regime. But within those basic constraints, providers need wide latitude to establish their learning programs, organize their operations, allocate resources and staff their schools.

- **Ensure charter/contract schools have resources.** New schooling options will need adequate funding. While charter schools are typically operated with less funding than traditional schools, they need an initial boost of start-up funds for facilities and materials. Researchers looking at failing charter schools frequently cite financial difficulties as a major reason for their problems,[v] and a federal study found that lack of start-up funds was the top implementation challenge cited by charter schools.[vi] So an essential element of any supply-creation strategy is designing a funding system that provides sufficient start-up dollars and through which adequate resources follow children to their new schools.

Improving the quality of authorizing and contracting

In addition to playing a role in ensuring regulations and statutory requirements allow new schooling options to flourish, state policymakers also have a responsibility to improve the *quality* of authorizing and contracting bodies. They can do this in many ways.

- **Define authorizers' accountability.** Authorizers wear many hats, not all of them comfortable. Clearly, authorizers need to implement a rigorous application process that allows promising schools to open while weeding out those unlikely to succeed. And once the schools are up and running, authorizers need to oversee them. When their charters come up for renewal, authorizers need to make merit-based decisions about whether to renew them.

  Is there a state role in holding authorizers accountable for doing these jobs well? There are many possibilities for such a role. States can simply make information about authorizers' actions widely available: What schools are they approving and rejecting? How well are their approved schools doing? Such "transparency" has the advantage of putting minimal constraints on authorizer practice. States can also act more directly. Ohio, for example, has instituted an as-yet-untested procedure for the state to approve would-be authorizers and revoke the "licenses" of those that fail to live up to their obligations. Minnesota too has empowered the state to review the actions of its authorizers. One resource for states seeking to define authorizers' responsibilities is *Principles and Standards of Quality Charter School Authorizing* by the National Association of Charter School Authorizers.[vii]

- **Provide additional resources to authorizers.** Just as schools need adequate funds to succeed, so do authorizing bodies. For example, asking districts to authorize new schools without providing additional funding ensures this role will not receive priority status, hindering the effort from the outset. Once the authorizer's responsibilities are clearly defined, all parties should ensure sufficient personnel and financial resources are in place. Typically, states ask authorizers to devote their own resources to the job – an approach that makes some sense in states where pre-existing school organizations, like districts, are the primary authorizers. Because some financial commitment is required to become an authorizer, it mostly will be the more eager agencies that get into the authorizing "business." On the other hand, asking organizations to rely on their own resources alone is likely to limit, perhaps severely, the number of entities that become willing authorizers.

- **Provide assistance to authorizers.** Since authorizing is a relatively new function, many emerging authorizers can use help in creating their systems. In most districts, for example, taking a "portfolio approach," in which the district does

[v] Center for Education Reform, *Charter School Closures: The Opportunity for Accountability* (Washington, DC: Center for Education Reform, 2002).

[vi] RPP International, *The State of Charter Schools 2000,* Fourth Year Report of the National Study of Charter Schools (Washington, DC: U.S. Department of Education, 2000), p. 44.

[vii] Available at: http://www.charterauthorizers.org/.

not directly own and operate all schools, is new. All the underlying processes, from constructing requests for proposals to entering into performance contracts to overseeing independently operated schools, need to be created. States themselves may not be in the best position to provide the needed help, but they can broker it to make it available to all districts seeking to use this approach.

As the ranks of charter authorizers have grown, more and more resources have become available to help them. Most significantly, there is now a National Association of Charter School Authorizers (NACSA), which exists to promote quality charter school authorizing. A state interested in helping its authorizers be more effective can enlist NACSA or other helpers to provide materials, training, consulting or other assistance to authorizers within the state. States such as California and Georgia, for example, have called in NACSA to work with district-level authorizers to improve certain practices, such as application-review processes. On a state level, Ohio has helped fund the Ohio Sponsorship Institute to provide training for organizations seeking to become authorizers in that state.

- **Share information widely about authorizing, contracting and new-options creation.** Authorizers in the midst of managing application and oversight processes rarely have time to step back and research best practices from across the country. The state, on the other hand, can take on this role. Reviewing research findings, attending conferences and establishing ties with other state agencies involved in similar efforts are best accomplished at the state level if the state then leverages its findings into easy-to-use tools for authorizing bodies. Part of NACSA's work in California, for example, has involved convening district authorizers to share best practices related to reviewing charter applications.

Attract and Develop New Supply

High-quality leadership teams with strong school designs that meet the specific needs of particular communities are challenging to find. Therefore, the state should work with authorizing bodies to identify and recruit potential school operators. There are several places to look:

Proven models seeking to replicate

Several school models designed to meet the needs of at-risk and low-income students are seeking to open multiple schools. Some of these models have an emerging or long-standing body of research to support their designs. Most have some test score data to give an idea of how successful they have been in improving student achievement. These models take different forms. Some are national in scope, some regional and local. Some are nonprofit organizations, some are for-profit "education management organizations" or EMOs. The common thread is a desire to open numerous high-quality schools that share some basic features. Such organizations can potentially open many schools within a state.

Strong individual schools seeking to replicate

As an alternative to bringing in an entirely new design, the needs-assessment process may turn up individual schools within the state that are successful at meeting the needs of the same types of students who are seeking a transfer. While it is not always easy to pinpoint what makes a school successful, there are many examples nationally of thriving individual schools that have been able to scale up successfully.

Paying for the Authorizing Function

Some states have sought to provide additional resources for authorizers, through two main mechanisms:

Direct state funding. Free-standing, special-purpose authorizers such as the District of Columbia Public Charter School Board and the Arizona State Board of Charter Schools, are funded (at least in part) in this way. So are the State University of New York's Charter Schools Institute and other authorizers. This approach has the advantage of creating a direct – albeit somewhat unpredictable – funding source. But it also authorizes the state in a way that some might find uncomfortable if state funding comes with explicit or implicit "strings" they regard as unacceptable.

Percentage of school funding. Some states, such as Michigan, allow charter authorizers to retain a percentage (e.g., 3%) of schools' per-pupil operating funds for their own use. This approach has the advantage of creating a "natural" funding stream not subject to annual budget wrangling. Schools may grumble, though, about the diversion of "their" scarce resources. And a straight per-pupil percentage may create incentives for undesirable actions, such as approving questionable schools to boost revenues, approving larger schools to increase per-school income and keeping alive failing schools to retain revenue.

Recruiting Proven Models and Leaders

An example from Indianapolis, where the mayor is the only charter school authorizer, can provide some good ideas for states. To ensure a steady stream of good applicants, the mayor's office created the Seed and Lead program, with funding from the local Richard M. Fairbanks Foundation. In the "seed" component, the mayor's office is actively recruiting organizations with proven school models to submit charter applications in Indianapolis. Independent researchers vet potential models; community leaders visit model schools; and the city hosts visits by the model organizations where they have the chance to make local connections and learn about the environment for charter schooling in Indianapolis. In the "lead" component, the mayor's office is partnering with Building Excellent Schools (BES) to recruit and train eight or more top-notch school leaders as Indianapolis Building Excellent Schools Fellows. The Fellows will participate in BES's yearlong program, in which they receive training, spend time in excellent charter schools and earn a "salary" as they design a new charter school.

[viii] Bryan C. Hassel and Michelle Godard Terrell, *"How Can Virtual Schools Be a Vibrant Part of Meeting the Choice Provisions of the No Child Left Behind Act?"* Paper prepared for U.S. Department of Education Secretary's No Child Left Behind Leadership Summit, July 2004.

Strong in-state community and cultural organizations interested in opening schools

Several successful charter schools have been started by organizations with strong ties and recognition in the communities they serve. Examples include community-based organizations dedicated to meeting the needs of immigrants, providing social services in low-income communities, and advocating for underserved populations. Because they are often new to the role of school operator, these grassroots efforts may need more support with some aspects of running a school, but they have the advantage of strong community support.

Top-notch educators capable of starting new schools

Another potential source of strong leadership is highly effective educators. These individuals may need additional support in the form of extensive leadership training before they are ready to take on the responsibilities of running a school, but if they have been successful with high-needs students, they have the potential to translate their knowledge of what works into an effective school design.

Other entrepreneurial individuals

Potential school founders are not limited to people with an education background. At the secondary level, there are several employer-linked charter schools started by business leaders interested in investing in a highly educated workforce. Charter school boards are routinely made up of people from various backgrounds, including law, finance, nonprofit management and education. There are an increasing number of high-quality leadership recruitment and development programs designed to help this kind of promising individual launch a school.

Virtual schools

More and more organizations have formed to offer different kinds of online education. Though much of this instruction is now delivered in the form of discrete courses, rather than entire schools, the number of full-blown virtual schools is also on the rise. Such schools can be part of the continuum of options provided to a state's students.[viii]

Recruiting and developing school leadership teams

There are several ways that the state can recruit and develop school leadership teams with the potential to open new schools in light of increasing demands for transfers due to NCLB.

- **Issue RFP or RFQ inviting organizations to propose new schools for high-demand areas.** Working closely with districts from across the state that are facing similar challenges, the state can help attract leadership teams with expertise addressing these challenges by issuing a series of request for proposals (RFPs) or request for qualifications (RFQs). The more specific and targeted the request, the more likely suppliers are to design school programs that meet identified needs and preferences.
- **Mount campaign to recruit from categories mentioned above.** At this point, the demand for high-quality proven school designs far outweighs the supply. Any effort to increase the supply will require a look at all the sources listed above in a systematic and ongoing way. This type of "campaign" to recruit and develop new models on multiple fronts is best orchestrated by a large district or by the state. Smaller rural districts and severely challenged large districts may not be capable of keeping so many different efforts on track.
- **Provide seed funding for creation of new schools/replication of successful models.** As part of its multifront campaign to increase supply, the state might have to offer funding support. Promising local efforts may need seed money to pay for staff and development costs, and successful models may need money to replicate their design elsewhere. One option for a state is to

consider how federal funding streams are currently distributed within a state to see if money can be consolidated or reallocated toward the creation of new options. For example, can the Public Charter School Program's "dissemination grants" for mature schools be used to encourage successful existing schools to open new campuses? Can other federal programs designed to foster innovation be used to help new schools start, rather than just to help existing schools innovate?

- **Create/support systems to assist new school founders.** Opening a new school successfully takes planning and preparation. Ideally, selected providers have time – perhaps up to a year – to get ready. During this time, and while the school is getting established, there are various roles the state can play to make sure new schools get off to a good start. The state can play these directly. Or the state can serve as a catalyst, providing encouragement and funding for outside entities to launch initiatives such as the following:

  Incubators. One option for state policymakers who know they will need several new schools per year might be to "incubate" leadership teams within the state. This will require additional manpower on the state level to run such an office, but there might be people with experience providing technical assistance or existing school-support organizations that are suited to take on such a responsibility.

  For an overview of the incubator idea, see the Center for Reinventing Public Education's publication, Stimulating the Supply and Building the Capacity of New Schools and School Developers: Recommendations for the Design and Implementation of a New Schools Incubator (June 2000), available at http://www.crpe.org.

  Leadership development programs. Another option for states with a large demand for new schools is to encourage the development of statewide leadership development programs. These can be housed in universities or state departments of education and funded by private philanthropies. They also can be specifically targeted to train teams to work in high-needs rural or urban areas.

  There are some national programs that have proven successful. For example, the Fisher Leadership Program provides principal training for people interested in leading schools that resemble the highly successful Knowledge is Power Program (KIPP) schools in Houston and the Bronx. Other examples include Building Excellent Schools and New Leaders for New Schools. All these programs offer extensive training, internships with a mentor and ongoing networks that new principals can tap into as they begin leading schools. A state can seek a partnership with one of these existing leadership programs in the same way that districts such as New York City and the District of Columbia have enlisted the help of New Leaders for New Schools in recruiting and training individuals to head charter and other public schools.

  Another approach the state can pursue to build strong school leadership is to establish alternative training options for strong local leadership candidates in rural and urban areas. These can include: creating distance-learning programs; funding the establishment of strong statewide networks that meet regularly; and allowing providers other than schools of education – such as teachers unions, nonprofits and districts – to train local people for leadership positions.

  Back-office service providers. One lesson from the first decade of charter schools is new schools often struggle with some of the ancillary aspects of schooling – financing a facility, managing finances, operating a transportation system and the like. These challenges are exacerbated when schools are independently operated, outside of district systems. States are not

Incubating Leadership

In 2003, the New Mexico Legislature appropriated $100,000 to the state department of education for "charter school incubation" – intensive help to organizations planning new charter schools. In May 2003, the department formally invited organizations to bid on a contract to create the incubator, which will provide on-site assistance to those planning charter schools on designing the school, completing the application, developing curriculum and understanding school law, governance, special education and charter finance.

The state let the initial contract to Youth Development Inc., a well-established nonprofit organization that offers a wide array of community services to children, youth and families in central and northern New Mexico. Twelve charter applicants made use of the yearlong training and assistance program, with the intent of submitting charter applications in fall 2004. As of August 2004, the state was in the process of awarding a new contract for $150,000 to continue these services.

Helping State Leaders Shape Education Policy

in a good position to address these problems directly, but states can serve as catalysts for the creation of organizations that can address them. For example, the District of Columbia provided funding to help charter schools create a cooperative organization to handle special education. Others, such as Ohio, have provided loan guarantees and other aid related to financing a facility. This kind of assistance helps new school leaders focus more attention on what matters most: what goes on in classrooms.

Other forms of assistance. In several states and districts with a strong history of creating new options, there are independent organizations that provide various types of assistance to new schools. These groups help new schools with the process of applying to a charter authorizer for a charter or contract. They also provide technical assistance, offer workshops, field inquiries, and even provide help with services such as accounting and facilities financing. By actively supporting such independent groups, the state can gain a valuable ally in its efforts to stimulate the supply of new schooling options.

Conclusion

As more and more parents demand new options under No Child Left Behind, will the supply be in place to meet it? Without a concerted effort, it appears the answer will be "no." A targeted campaign to assess needs, create an environment in which new options can form and thrive and develop new supply, however, can provide the choices families are requesting.

While districts are primarily responsible for providing options, there are many roles states can play in making sure every family has the opportunity to make a successful school choice. Many states are already experimenting with these approaches, and more are sure to follow in the coming years. As they do, the knowledge and experience base related to this role will grow, and states will have more and more models to use as they explore how to stimulate the supply of new options.

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