



THE GEORGE WASHINGTON UNIVERSITY
CENTER FOR EQUITY AND
EXCELLENCE IN EDUCATION

Managing Contracts For Educational Equity: Emerging Trends and Issues

Patricia Burch
June 2010

The George Washington University
Center for Equity & Excellence in Education
1555 Wilson Boulevard, Suite 515
Arlington, VA 22209

About the Author

Patricia Burch is visiting professor of K-12 Education Policy at The University of Southern California Rossier School of Education. Dr. Burch's research examines education policy at the Federal, state, district, school, and classroom levels in order to understand connections between policy and practice. She is author of *Hidden Markets: The New Education Privatization* published in 2009. In this book, she maps out how the education market is changing and how an array of privatization initiatives has transformed public education in the U.S.

Copyright © 2010 The George Washington University Center for Equity and Excellence in Education, Arlington, VA.

This publication should be cited as: Burch, P. (2010). *Managing contracts for educational equity: Emerging trends and issues*. Arlington, VA: The George Washington University Center for Equity and Excellence in Education.

This report is available at: <http://ceee.gwu.edu>.

The contents of this report were developed under a Mid-Atlantic Equity Center grant from the U. S. Department of Education. However, these contents do not necessarily represent the policy of the U. S. Department of Education and you should not assume endorsement by the federal government.

The Mid-Atlantic Equity Center was the federally funded equity assistance center serving Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia for the period 2008-2011. Its mission was to promote academic rigor for students who have traditionally been denied educational opportunities and equal access to a quality education.

Managing Contracts for Educational Equity: Emerging Trends and Issues

Introduction

The past decade has witnessed an unprecedented expansion of the influence of the private sector in all aspects of public education. Across the United States, test publishers, software companies, virtual charter school operators, and other industries are rapidly moving to take advantage of the significant revenues made available by public policies. As these companies garner billions of dollars in public revenues, they assume a central place in the day-to-day governance and administration of public schools; however, while drawing on public money and the authority of public policy, the work of the new privatization has been kept relatively hidden from view. Drawing on the research I have conducted in school districts around the country that contract with private firms for functions typically performed by the district, this paper examines how developments in K-12 education contracting change the district's role in education. It pays particular attention to emerging policy issues and the policy tensions they raise.

There are four central arguments presented in this paper. First, there have been important developments in school district contracting in the United States that deserve close attention from those district policymakers who work to expand educational access and participation in high poverty communities. These developments are discussed in the first section. Second, some of the Federal mandates driving the rise in contracting are designed to benefit the market rather than the interests of the public sector, and at the same time there are few safeguards to ensure equity. Third, private firms are taking on more roles within school districts,

and large firms are a dominant force within this dynamic. Fourth, surveys show that power asymmetries exist between service recipients (parents) and providers because many parents have limited access to information regarding privatized services even though they are the intended beneficiaries. I discuss these arguments in the second section on emerging policy issues. I conclude by identifying three action areas for districts interested in using contracting in order to expand access and participation in high quality programming.

Developments in Education Contracting

Education contracting has a long history in the United States. However, before the 1990's, contracting for services in K-12 education tended to focus on what has been called noninstructional services. These services included things such as food service, vending, transportation, and custodial services. One reason for the early privatization of noninstructional services was that proponents of privatization viewed activities such as food service and transportation as more politically acceptable domains for district outsourcing. Districts reasoned that they could more easily focus their energies on the core work of teaching and learning by contracting with outside firms for the noninstructional activities. A second reason those who support contracting of noninstructional services did so was on the grounds of cost efficiency. From this perspective, if an outside vendor provided a service more cost effectively than a government agency and the service was non-essential or represented a one-time need, then it was assumed that private contracting was justifiable.

Beginning in the 1990s, educational contracting entered a new chapter with the rise of Educational Management Organizations (EMOs). Unlike noninstructional contractors, who play a limited role in the operation of school districts, EMOs typically assume full responsibility for school operations, including administration, teacher training, and food service. Examples of EMOs are Educational Alternatives and Edison Schools. Policy developers and advocates promoting EMOs emphasized outcome-oriented school reforms and identified the business community as stakeholders and experts in the work of EMOs. Districts such as Philadelphia and Baltimore contracted with EMOs to oversee the management of individual or groups of low-performing schools.

The current chapter of educational contracting, which has received less attention from the press but cannot be ignored, is being written by firms of a different kind. These are specialty service providers. While schools have always bought school goods and services (i.e., food services, maintenance, textbooks, equipment, transportation), under the No Child Left Behind (NCLB) Act of 2002, federal policy extended contracting to include core instructional areas, including test preparation, tutoring, curriculum development, and the expansion of professional development. It also included contracting for particular parts of curriculum such as driver training and foreign languages. Although there has been some expansion of the purchase of privately provided goods and services, the main change has been to extend private contracting to include these specialty service providers. In the mid 1990's, district contracts with specialty service providers represented a small slice of the contracting sector in public education; however, since 2003, specialty service providers have become vital players in the K-12

education market. By some reports, school and local districts now spend approximately \$48 billion per year to purchase products and services from the private sector (Burch, 2009). Specialty services include after-school tutoring, school improvement and management services, charter schools, alternative education and special education services, and professional development for teachers, administrators, and educational content providers. Some firms are well-established in the industry. This includes textbook publishers such as Houghton Mifflin and Princeton Review. However, many new companies have entered the market since 1990, such as Edusoft, K12, Blackboard, SchoolNet and Connections Academy. The K-12 education market, which was termed „sluggish“ a decade ago by Wall Street analysts, is exploding through a rapid influx of capital investments and public education revenues. Consider the direction of the trend presented in the diagram that follows.

We are gradually moving towards a situation in which private firms are moving closer and closer to the instructional core in their contracts. While previous contracts for services such as transportation had little to do with the core functions of teaching and learning, new contracts handling on-line content, the scoring and analysis of test score data, and remedial tutoring do cut very close to the instructional core.

Changing Landscape of Educational Contracting



Source: Burch (2009).

Emerging Policy Issues

Managing the Public's Interest and Ensuring Equity

The expansion of educational contracting to instructional services has been accomplished through federal mandates that are designed to benefit the market rather than the interests of the public sector. In addition, there are few safeguards to ensure equity. More specifically, contracting activity encouraged under NCLB was designed to benefit the market rather than promote educational access and participation and the interests of the public sector more generally.

One conception of the role of the private sector in private contracting is that while private firms are provided with the autonomy to innovate, they should be incorporated in, rather than detached from, the district's broader accountability scheme. In contrast, the prevailing view of private sector accountability under NCLB is that accountability is

something that is done to the public sector. The private sector is buffered or bracketed from regulations. As I argued in Hidden Markets (Burch 2009), the law privileges the rights of private firms and underwrites risks for firms in several different aspects of the law.

Mandates for after-school tutoring under NCLB provide a good example of this orientation. Under the supplemental educational service (SES) provisions, schools that do not make test score targets for three years or more must make after-school tutoring available to students in the school, paid for by the district. Under certain conditions, the district, itself, may provide these services. However, districts that do not make test score targets for three years or more are prohibited from providing these services themselves, although they still must pay for them. There are no parallel accountability standards for the outcomes of private sector tutoring; state bureaucracies are simply given vague direction to include approved SES providers in a statewide list each year and to remove those providers which do not offer evidence of effectiveness.

Through its regulations, NCLB facilitates the access of private firms to public funds and thereby signals that private firms are deserving of government protection. It does so in a number of ways. First, as part of its responsibilities under the law, the state education agencies (SEA) are required to provide annual information to vendors about contracting possibilities. In other words, the responsibility of the SEA, as defined by law, is to make sure that potential vendors are aware of the policies that could provide them opportunities to participate in public practice and access to accompanying revenues. Second, local education agencies (LEAs) also are required to provide notice to parents of

children eligible for tutoring about the availability of services provided by private contractors.

The law is very specific on these points. States must make this information available to vendors on an annual basis. The importance of making sure the private sector has the information that it needs is not a footnote in the policy; it is identified as one of the state's major responsibilities. Further, the law requires that districts with schools that provide SES must ensure that all eligible students participate in the program. Under the regulations, if the district has demonstrated that there is demand for these services and does not meet this demand (students are not enrolled, the money set aside for SES is unspent), then the district is considered out of compliance and can face sanctions.

Thus, NCLB represents a clear attempt to protect the rights of these firms even as it places limits on what districts and states can do to hold firms accountable. Specifically, states are strongly encouraged to set ranges rather than absolute values on pricing, so that providers' service delivery options will be as broad as possible. Federal policies are explicit about the responsibility of SEAs and LEAs to ensure that English language learners and students with disabilities receive appropriate educational services. However, the actual guidance provided by the government for states in implementing SES takes pains to exempt private providers from the civil rights responsibilities required of *government* SES providers. The guidance states that SES providers are in principle not required to follow civil rights statutes because these statutes only apply to direct recipients of Federal funds.

Managing Shifting Public and Private Roles

Private firms are taking on more roles within school districts and large firms are a dominant force within this dynamic. As firms expand their services to districts, their role within the district and the possibility of their influence expands. In the past, a municipality might contract with a vendor while maintaining its primary role as a policy setter and implementer. Now vendors are assuming responsibilities that give them more influence over critically important aspects of public school governance. Districts are paying outside vendors to assist them in the overall design and operation of accountability reforms. Firms that once simply developed tests now also play an important role in designing interventions for failing students and schools. Firms that once simply provided raw test score data make decisions that shape how schools and districts interpret the data.

An executive of a testing firm interviewed as part of a broader study of privatization noted,

As you start to do this work [with the new assessment systems] you realize that you are getting well beyond the scope of the product per se, you are getting into as a company ... curriculum development and teacher management. It's doing a lot of leading and guiding and creating a vision of what can be done.ⁱ

Similarly, an executive for a data management firm, described the strategy behind the firm's benchmark assessment division in this manner,

We are not selling some districts a piece of software. We are selling a combination of things. They [our clients] are turning to us and saying, "I want to know about my kids, how to solve this problem. This is the trend, not turning to

providers for one thing, but turning to providers for solutions. Saying to us, I have all these kids who are not making the grade in mathematics, I have all this funding from Title I or wherever, I don't have any idea of how to reconcile the problem with the funding. I have all these racist issues. What can I do to customize the solution so Johnny coming from his particular environment will be able to read? ⁱⁱ

In these statements, one hears executives claiming, for their firm, expertise that typically has been considered the domain of public policy. This includes areas such as teacher management and leadership development as in the case of the first example. In the second example there are bigger promises. The executive expects her firm to help districts deal with racism in schools and the achievement gap, as suggested in the reference to “Johnny coming from his particular environment.”

From one perspective, these activities simply represent efforts by districts to leverage the resources and infrastructure of the private sector in order to meet accountability standards. However, taken together, they add up to something much more that has important implications for firms' relationships with districts. When school districts purchase products and services from firms such as SchoolNet, they are, in essence, hiring private firms to act as critical extensions of educationally central policy processes – to set preferences for what educational outcomes matter, to track educational outcomes, and to design interventions based on these outcomes.

To further illustrate, take the case of district-sponsored after-school tutoring. Before NCLB sponsored after-school programming, there were the 21st Century Learning grants. These are federally supported community learning centers that provide academic enrichment opportunities during non-school hours, as well as during the summer, for

students who attend high-poverty and low-performing schools. The theory of action behind the grants is explicitly one of power sharing between the community and district. The grants are competitive but priority goes to proposals in which schools or districts establish a partnership with a community-based organization. For example, a district might lead or collaborate with an organization such as the YMCA in designing the after-school program. In this scenario the district also hires and staffs program coordinators and, in some instances, may provide additional funding for the program.

Under the market-based version of after-school tutoring, SES, the role of the district shifts. Individual parents select an after-school tutoring firm from a list of vendors approved by the state. Vendors choose the curriculum; districts are by law not allowed to be involved in the choice of curriculum. The vendors hire tutors and have responsibility for training them and for communicating with parents about their children's academic progress. In districts that do not make test score targets, the district actually is forbidden from providing tutoring unless it receives a waiver from the U.S Department of Education. In certain instances, vendors are incorporated into district-level rulemaking through the formation of influential advisory councils.

Managing Parent Access to Private Sector Vendors

Parents – the intended beneficiaries of SES – bring important perspectives on the quality of educational services made available through contracts. As noted earlier, new forms of educational contracting are not simply contracts to help districts with administrative functions. They are contracts that involve the design and delivery of services for students who attend public schools, including students who live in high

poverty communities. As such, they bring new challenges to districts in managing parent access to private sector vendors.

Limited Information for Parents¹

Private firms, like large public school bureaucracies, can be difficult for parents to access when they need information or have complaints.ⁱⁱⁱ In my research on SES, I interviewed parents about their experiences dealing with an SES provider. One parent who had initially received information from the school had difficulty reaching the provider she selected after the enrollment period. She commented,

I had to call [the provider] several times and they started late. They could not fix the program because it didn't start until about a month after everybody else. I don't know what the problem was but everybody else started the month before. Reflecting upon the experiences of other parents at the school, this parent found the provider "hard to reach" and was left in the dark about critical information such as the program start date.

Other parents felt that they received erroneous information from the provider even when they did make contact. Deanna, a parent who was active in her foster sons' schooling through the PTA and the school council, cited her experience with one provider in particular. She recalled: "I was mad because they said they would get a computer and all they got was a hundred dollars. They were absent, see, like from school that day, and that counted against them. I felt cheated on that note." In this way, respondents frequently stated that it was not an issue of quantity of information but of quality of

¹ This section also appears in Burch, 2009, Hidden Markets.

information. Miriam, a guardian whose teenage granddaughter was enrolled in tutoring, stated,

There are so many [providers] that you end up getting information on but not enough information....if you complete this class and show up then you have an opportunity to get a computer. That's one of the reasons that influenced some of the kids because there was some incentive at the end of this but yet ...what happen with that computer thing? Didn't that get lost out there? I don't know that didn't anybody get one from one of the companies. I never got a lot of good information.

As reflected in the above statement, parents felt that the quality of information made available by providers was nebulous at best.

These parents' comments reveal how the involvement of multiple private firms in the design and delivery of government services can exacerbate the challenges of being a recipient of those services. Because a lot of information is sent to parents at once, it is hard to process or even to know from whom it is coming. Judy, a parent who was president of the school PTA and was extremely involved in her son's schooling both in and out of the building, noted that the glut of materials may have contributed to what she saw as some parents' lack of awareness of SES. Judy and her son had a very positive experience throughout the information and enrollment process, but she recognized that was not the case for many parents. She stated,

There are brochures that come out mailed to all of their homes. So you really can't say that the information wasn't made available, it's just that you didn't pick

it up. [They] saw that there was [the district's name] on it, thought it was just another piece of junk mail. I'm just going to tell you that's how it is.

In this way, there was some variation among parents' perspectives on the availability of information. Some of this variation could be explained by the powerful influence of such factors as a parent's ability to sift through program materials in addition to fulfilling a variety of other work and family responsibilities.

Parents based their evaluations of the success of tutoring by the grades that their child received at the end of the school year. However, all respondents stated that they had little idea about the kind of instruction taking place during the tutoring sessions. Miriam stated, "I was assuming that she was getting what she needed. She got good grades, don't get me wrong, but I don't know was it because of the tutoring or because she just really understood what was going on." In the absence of any clear information about how their children were being taught, parents were understandably suspicious about how much SES was actually responsible for grade improvements. Deanna commented, "I was seeing a difference in my son with some of his work, and the last marking period, he got a 3.7, but, you know, a lot of it is the parent."

Parents also frequently raised the question of how tutoring services were being assessed. Judy, whose son had arguably had the most positive experience with tutoring out of the children in the sample, still felt that a serious shortcoming of the tutoring program was the lack of assessment. She stated,

There needs to be better outlines as to what will be happening in the tutoring. Because I don't really recall...I think that they do evaluations on the kids but I really don't think that they do an assessment of the child. They really need to set

guidelines as to the outcomes of it, what do you expect the child to get out of this, should there be an exit test, what kind of improvement they've had.

Judy's comment points not only to the need for assessment of the children, but also accountability for the providers who, in the eyes of the parents, may or may not be meeting expectations.

Power Asymmetries

Despite the fact that several of the parents quoted above spent a great deal of time advocating for their children *in* their school, they did not feel that they had appreciable control over the quality of the structure of the tutoring program beyond removing their child from the program or confronting individual SES instructors. Even parents like Judy who said that she felt that she had a handle on how to make her son's needs clear to his instructor did not attempt to raise structural concerns with providers. Deanna illustrated this point of view when she noted,

No, I don't feel that parents have control over the tutoring program because it's already established. So, you know, all I can do is snatch my kid out of the program, or you know, that's my right. Where I can go up there and talk to the teachers, that's my right as a parent on any given day.

Ultimately, parents felt that the tutoring services had the potential to be a positive influence on their children's educational experiences. Still, they believed there were a number of glitches that needed to be worked out before the program could have its desired effect. Parents did not, however, feel that their input would necessarily lead to changes. As a whole, respondents felt that their interventions could only be made on the

part of their individual children and would not have an appreciable effect on the overall structure of the program.

At the same time, all of the respondents felt that tutoring services had great potential to enrich their children's schooling. Although they identified areas of the policy in need of improvement, the parents saw something of potential value in the SES program. As a whole, they felt that additional instruction outside of school could only benefit their children and welcomed an effective intervention with that purpose.

These patterns suggest that when for-profit firms become the primary deliverers of after-school tutoring, parents do not necessarily gain any more control over instructional programming. Rather, they continue to be left in the dark about curriculum and instruction. These dynamics are made more troubling by the fact that some parents believe emphatically in the goals of SES and its potential to have a meaningful impact on their children's education. However, in general, they did not feel that there were opportunities to voice their concerns. These dynamics further reflect how some of the practices of public schools are carried forward in the market. If parents are low-income and non-white, then their perspectives and need for in-depth information may be easily ignored.

Summary

So far, the rise of educational contracting in K-12 education has not been paired with how to hold private firms accountable for their performance. In new forms of contracting emerging under NCLB, providers get paid whether or not they contribute to student performance outcomes. There is a lack of parity between the accountability standards to which the public sector is held and those to which the private sector is held.

Furthermore, for-profit firms generally operate with considerable autonomy in terms of who they hire, how they organize instruction, and how much or how little information is provided to parents. In these ways, for-profit firms can sometimes reproduce the inequitable practices of public schools. Under market-based education policies, there may be fewer safeguards for ensuring access and participation for students with disabilities and English language learners.

Finally, concurrent with the new privatization, private firms appear to be taking on new roles with school districts. In these dynamics, the traditional role of public agencies (as enactors of public vision and values) is shifting, although not shrinking. Under new forms of education privatization, the district's role becomes highly technical, organized around the management of contracts and the need for greater efficiency, while substance is shaped by the contracting private entity.

Recommendations

What needs to happen in order to minimize the negative consequences of the new educational privatization? What kinds of institutional arrangements seem promising as tools for preventing profit agendas from trumping quality and equitable programming? With respect to the issues defined in this paper, the following three policy areas should frame school district action on this issue. Specific examples of policy steps support this direction.

Managing the Public's Interest and Ensuring Equity

- Make a commitment to having specific, district level staff dedicated to monitoring and oversight of contracts that involve the design and delivery of instructional services for minority and high poverty students.

- When the contracted services are for instruction, require an email and phone avenue or other communication channel between the providers and school staff and families so that there is more possibility for creative problem solving at the site level and a sustained focus on students’ individualized needs.
- Establish targets that define service delivery standards. These can include “curriculum targets” (tied to learning targets and, more specifically, to reading, writing and math curriculum), “instructional targets” (acceptable ratio, session length, use of enrichment/activities, facility, percent of time allocated to skill building/mastery, homework, and bureaucracy, etc), and “staffing targets” (level of education and teaching experience, and content and format of training).
- In the case of educational services, require providers to offer services for English language learners and special education students and to show evidence of appropriate curriculum and instruction for these populations. Consider the possibility of creating financial incentives for providers to reach English learners or special education students that they serve.

Managing Shifting Public and Private Roles

- Frame the language of the memorandum of understanding on *responsibilities* to an explicit format (“If you have a question about ---, call---”) to address confusion over who has jurisdiction. Also, explicitly say what principals and SES coordinators have control over when it comes to SES.
- Find ways to build long-term *civic* capacity and commitment to improved services by getting local community and outsider groups involved in the discussion about the design of services.
- Initiate discussions on what a system of governance for new forms of contracting, (e.g. on-line tutoring, contracts for school management, SES) might look like. In this discussion, the following questions are key: How much control do districts have in the design of contracts and in what areas? What are the products or services being purchased?

Managing Parent Access to Private Sector Vendors

- Where families are intended stakeholders, require providers to use multiple strategies to contact parents.
- Arrange regular coordinating meetings for contractors and stakeholders involved in specific areas of service delivery (for example school administration and academic staff, provider, parent, student).

- Cultivate relationships with organizations who are committed to building staff capacity and are known to have a track record in the area in which services are being contracted.

Conclusion

In this paper, I described new developments underway in the private market for K-12 services, paying particular attention to the policy issues emerging from these private forms of contracting. Because these developments have implications for the role of districts, I identified preliminary strategies that school districts can employ to structure relationships with providers in the service of expanded access and opportunities.

There is a new face to the school improvement industry, even though such broad changes are not always discernible to those in the districts working with individual private vendors. Much of the activity described in this paper is happening behind the scenes and is likely to have significant implications for equity and disadvantaged children, as private firms become major suppliers of instructional services. In addition, there is little publicized information about where money is flowing. It can be difficult for even district administrators to track the flow of funds because the firms doing business operate under a complex web of contracts and subcontracts. Further, even if district administrators are interested in improving contracts for educational services in their district, translating interest into action requires resources including know how, political capital (e.g., to stand up to big firms), human capital (staffing resources) and more.

Endnotes

ⁱ Vice President, personal communication, July 20, 2006.

ⁱⁱ President, personal communication, June 28, 2006.

ⁱⁱⁱ The discussion of parents' experiences draws on interview data collected by May Hara, University of Wisconsin – Madison. See, Hara, M. (2007). *Everything has a price tag: Parent responses to supplemental educational services*. (Master's thesis, University of Wisconsin – Madison, 2007).

References

Burch, P. (2009). *Hidden markets: The new education privatization*. New York: Routledge. The Critical Social Thought Series.

Hara, M. (2007). *Everything has a price tag: Parent responses to supplemental educational services*. (Master's thesis, University of Wisconsin – Madison, 2007).

U.S. Department of Education. (2008). *Supplemental educational services: Non-regulatory guidance*. Washington, DC: Author.