

# **In the zone: New Zealand's legislation for a system of school choice and its effects**

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This paper examines the legislative framework developed in New Zealand over the last 15 years to facilitate greater parental choice in education. The discussion is set within the context of changes to admission practices in a number of education systems to advance the privatisation agenda, and outlines the resurgence of interest in the development of voucher-based models of school choice. The New Zealand case study describes the series of regulatory changes that governed admissions and selection from 1989 onwards, with particular focus on selection in situations of school over-subscription.

## **Introduction**

Policies of school choice need to be viewed as existing on a continuum between, on the one hand, full state funding and provision of schools within a highly regulated environment and, on the other, a fully privatised system where the state neither funds nor provides schools. This process was clearly described by Fisher (1990) in an early paper:

Privatisation is not a single event where an item is sold. Instead, privatization is a process where partial and indirect methods should be seen as parts of an overall strategy. Privatization refers to the transfer of costs and responsibility for any productive activity from public or state control to private control. Control by any individual, or group of citizens, or privately owned corporation, or non-profit organisation, may be considered to be private. (Fisher, 1990, p. 47)

What we have seen in policy terms over the past two decades is the public/private continuum constituted as a site of struggle. It could be argued, however, that an

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uneasy (and not unopposed) educational 'settlement' has been achieved around the broad principles of devolution, choice in a free market and accountability [<sup>1</sup>]. Different ideas stemming from these principles have constantly appeared and reappeared, in more or less 'public' or 'private' forms, on the political agenda (Metcalf & Tait, 1999). In English-speaking democracies there has not been so much energy put into educational policy since national systems were developed in the nineteenth century, and at the time of writing, positional struggles continue to be played out nationally and internationally.

This paper discusses one small struggle evident on New Zealand's national political stage since choice policies were introduced in 1989. The right for parents to choose any school for their children clashed heavily with the reality that popular schools could not (or would not) expand to meet all demand for places, with the result that legislation was introduced to determine how places would be rationed. Since 1989, four separate Acts have defined and redefined enrolment policies, reflecting real political issues about the effects of school choice.

However, we are taking the opportunity in this paper to put this case study in a much broader international context. In particular, we are interested that voucher schemes are back on the political agenda. In New Zealand, US-style rightwing think-tanks are once again advocating voucher systems from either a neo-fundamentalist (the Maxim Institute) or neo-conservative (the Education Forum) perspective. The spectre of Stuart Sexton has returned to haunt us [<sup>2</sup>]. Indicative of this resurgence, a recent book for the New Zealand Education Forum by Harrison (2004) advocates a full voucher funded by the State, a move to complete privatisation of provision (currently only 3% of New Zealand students attend a private school), voluntary attendance, the replacement of national teacher pay structures with site bargaining, the ability of parents to top-up vouchers to attend expensive schools and the abolition of the national curriculum.

This paper is thus structured into two parts. The first part examines the national and international political agenda towards the increasing privatisation of education. The second part examines how these forces were, and continue to be, played out in one particular keystone of school choice: how school systems select students in a situation of over-subscription. We have also taken the opportunity to contrast some aspects of admission policies and practices in New Zealand with those of England (and, to a lesser extent, the US) which, while increasingly formalised (Department for Education and Skills, 2003), remain something of a black box.

### **Privatisation and Vouchers in the Twenty-First Century**

In New Zealand, it is more than a decade since voucher schemes were rejected in favour of a lesser system of choice, and more than 20 years since the Thatcherite Education Minister Sir Keith Joseph announced in the Commons that:

... there would be major practical difficulties in making any voucher system compatible with the requirements that schooling should be available to all without charge, compulsory and of an acceptable standard. (Joseph, cited in West & Pennell, 1997, p. 287)

The new wave of voucher-fever rests on what advocates believe to be the success of such systems in the US (Caire, 2002). There is some evidence that inner-city minority children may achieve better outcomes through voucher schemes than their peers left behind in public schools, although in quite narrow circumstances (Witte, 1995, 1999; Howell *et al.*, 2002). However, the evidence for the success of voucher systems is quite small, often resting on improved access to and funding of Catholic schools (Carnoy, 2000).

Miller-Kahn and Smith (2001) note that arguments for extending choice systems into more privatised voucher models now come from a wide range of organisations and groups, which have formed (in the US at least) into loose coalitions that might otherwise have little else in common:

1. Political conservatives with an aversion to all government institutions.
2. Religious conservatives—‘... school choice policies as ways of escaping the wickedness—sex education, secular humanism, assault on family rights and values, absence of school prayer, and promotion of homosexual and other non-traditional lifestyles, even Satanism—that to them was evident in public schools’ (ibid., pp. 2–3).
3. Cultural restorationists who stress an anti-progressive education approach and focus on standards.
4. Existing parochial schools, which view choice as a means of ensuring survival.
5. Activist parents (especially Black) who have lost faith in the schools their children attend and see choice as a means of escape.
6. Entrepreneurs and corporations ‘that desire to construct private schools for profit as well as those that want to market products and services to public, choice and private schools alike’ (ibid., pp. 2–3).

These voucher advocates have not made a lot of progress to date in Western democracies in achieving the ultimate objectives of a publicly funded, privately run, commercialised system of education (Menendez, 1999). However, in the absence of full voucher systems, models of ‘school choice’ have made significant inroads into education systems, and reform is continuing. In the US, the passing of the federal No Child Left Behind Act of 2001 mandated more parental choice and flexibility. A few weeks ago a *Five-Year Strategy for Children and Learners* (Department for Education and Skills, 2004) was released in England. The report notes of secondary education:

[The government’s] central purpose ... is ... to widen the range of real choices which are available. We will build on the achievement of the last seven years, to increase freedoms and independence ... and to extend choice and flexibility in the curriculum. ... We are not creating a new category of schools—rather, giving more independence to all schools within a specialist system. (DfES, 2004, p. 8)

These ‘freedoms’ include a shedding of support structures (including the revamping of LEAs) in the public sector, more power to seek private sector partnerships, a new

emphasis on discipline and ‘traditional values of respect and authority’ (op cit., p. 9) and massive changes to inspection and regulatory regimes. The model outlined in the report is not a voucher system, but it moves the English system quite a way further along the continuum towards privatisation. The Education Minister noted that a key intention was to:

... lure back into the public sector middle class families who go private out of despair. In reality, the private sector accounts for just seven percent over the overall school population. (Clark, cited in Smith, 2004, unpaginated)

Table 1 below lists a range of policies (it does not purport to be exhaustive) introduced in England, the US (usually at State or school district level) and New Zealand (Wylie, 1999) that have advanced various elements of the privatisation agenda. Some of these no longer exist, but this does not mean they are erased from the political agenda. They clearly demonstrate the range of initiatives encompassed by the privatisation process, from very small, contained programmes to system changes.

In the early 1990s New Zealand became known as the country that had gone furthest in implementing a schooling system based on parental choice and market competition (Fiske & Ladd, 2000). Key aspects of the changes included: the abolition of most regional and national government functions supplied for schools; the devolution of governance and management responsibility to individual schools and elected parent-run committees; the privatization of some support services; the opening up of parental choice of school and the introduction of roll-based funding that led schools to compete with one another for students. The main elements of a ‘market’ system not introduced at the time related to the bulk funding of teacher salaries and site-based teacher wage bargaining.

It is now 15 years since that system was introduced. Most aspects of the system have remained unchanged, although some, such as increased government funding to private schools, have been paused but not reduced. In the past five years some of the

Table 1 Some policies of privatisation in selected countries

|                                  | England  | USA                           | New Zealand   |
|----------------------------------|--|-------------------------------|---|
| Limited voucher schemes          | Assisted Places Scheme                                     | Milwaukee, etc                | Targeted Individual Entitlement (TIE) Scheme            |
| Autonomous/privately run schools | City Technology Colleges<br>City Academies                 | Edison contracts              | Integrated schools<br>Public funding of private schools |
| Autonomous public schools        | Grant maintained schools<br>Independent specialist schools | Charter Schools               | Whole system  |
| Parental choice of school        | Yes<br>LEA moderated<br>Appeals system                     | Only in limited circumstances | Yes<br>Legislative framework, moderated by schools      |

more privatising elements of the original reforms have been abolished under Labour-led governments, such as the Targeted Individual Entitlement (TIE) voucher scheme to fund a small number of poor children into private schools and partial bulk funding of teacher salaries. The case examined in this paper, enrolment policy, has also undergone significant legislative change since 1989, which we have detailed elsewhere (Pearce & Gordon, 2004). The Ministry of Education, having assumed a 'hands off' approach to system-wide management since the late 1980s, has recently adopted a more pro-active stance in a number of policy areas. For example it has taken a prominent role in literacy leadership after it was demonstrated that New Zealand had developed one of the largest gaps between high and low literacy achievement of any country in the world during the reform period (Gordon, 2003).

In other ways, however, especially in relation to parental governance of schools, roll-based per capita funding and the ability of parents to 'choose' which school to send their children to, very little has changed. In general, schools in wealthy areas have expanded while schools in poor areas have got smaller, but only a small number of 'sink' schools have been closed. While the last decade of the old millennium saw enormous policy changes to encourage the diversification and opening of state schools to parental choice (Gordon & Whitty, 1997), the first decade of the new appears to be characterised by renewed struggles towards vouchers and privatisation.

### **The Struggle over Enrolment and Admissions Policy**

There is a large body of literature on parental choice from a parental or community point of view in all three countries that we have identified here. School choice is popular and not just with the middle classes. For example, Bomotti (1998) found in the US:

Parents of children in neighbourhood schools exhibited a high level of awareness of choice options, and they were generally supportive of most of them, whether they currently existed in the school district or not. When asked what they thought about a variety of choice options, 81% supported within-district choice, 67% supported public alternative schools, 63% supported the idea of a school-within-a-school, 46% supported home-schooling, 37% supported charter schools, and 34% supported vouchers. (Bomotti, 1998, p. 314)

Research in England has illuminated the way that parents make choices within class-based discourses, which often bear little resemblance to a rational choice based on the educational quality of schools (Reay & Ball, 1997, 1998; Ball & Vincent, 1998; Reay & Lucey, 2000; Bagley *et al.*, 2001). Similar work in the US (Holme, 2002) and New Zealand (Lauder *et al.*, 1994, 1999) underlines the fact that school choices are made on relatively superficial observable grounds, although underpinned by far more meaningful but hidden discourses around race, class and gender. Some are able to use class strategies of 'positional knowledge' to enhance their opportunities within the system (Watson, 1997).

While this area has been deeply and richly explored in the literature, the same cannot be said for the rules that govern school enrolments. The proponents of voucher schemes somewhat naively envisage a school universe of endless expansion.

But the reality in cash-strapped state systems is that schools have a relatively fixed number of places. The funding of spare capacity that would make school choice real certainly does not exist in the New Zealand context of sinking-lid government expenditure and ‘fiscal responsibility’. The universe is bounded, too, in sought-after elite schools, both state and private, albeit for different reasons. The value of scarcity to these schools (and to parents) and the advantages it confers far outweighs the benefits of expansion. Because the school universe is static (some might even say contracting), and while parents may agonise over their first choice of school and bring to bear whatever influence they can—including house-buying tactics—there is no guarantee of a place. And the more sought after and popular the school, the less likely a child is to win a place there.

The literature outlining rules governing parental choice in school districts in the US is extremely limited. For example, many magnet schools have more enrolments than places, but the literature is largely silent on *how* selection takes place. In one paper where this question is addressed, the author notes that ‘the school district does not keep quality data’ regarding which applications were approved (Saporito, 2003, p. 188).

In England, school admissions policy is similarly opaque and problematic, as demonstrated by a recent successful judicial challenge to the enforcement of LEA boundaries (West *et al.*, 1998; Department for Education and Skills, 2003). The policy has only recently been codified into a ‘code of practice’ (Department for Education and Skills, 2003) and a related appeals code. The stated goals are to make the system fairer and more open (*ibid.*). LEAs are now required to publish selection rules, which may include:

... sibling links, distance from the school, ease of access by public transport, medical or social grounds ... catchment areas, transfer from named feeder primary schools and whether the child is in care. ... Admission authorities should make clear the order of priority in which the criteria will be applied, and how tie-break decisions will be made—for example, by using the distance from home to the school main entrance within a priority category when the admission number is reached. (*ibid.*, p. 10)

The appeals process has been the subject of recent research (Taylor *et al.*, 2002), and research is also beginning to emerge on selection practices (West *et al.*, 2003). As noted above, the current scheme, despite its published rules, is essentially a ‘black box’ process. By 1 March in the year of enrolment, the system promises only that parents will receive an offer of a place in a school for their child. Any manoeuvrings by schools behind the scenes, arguments between schools over the admission of a particular child, clashes of policy or systematic biases, if they exist, are completely hidden from the view of the parents. It must be exceptionally difficult for parents to collect evidence in support of an appeal in a system described in an opinion piece as:

... a complex mosaic of procedures and local practice, riddled with overt selection, covert selection and huge inequalities. Where there are very popular schools, far from having choice, parents only really get a preference. The choice lies with the schools, which they can exercise against the interests of the local community. (Miller, 2003, unpaginated)

The school choice pressures in New Zealand that we describe below are substantively the same as those faced in England’s schooling system, even though there are

marked legislative and administrative differences between the two systems. There is recent speculation that the British government might legislate for a consistent approach to school admissions (*ibid.*). If that is the case, the New Zealand context may provide some useful data.

### **School Enrolment in New Zealand**

In a 1956 paper written for an international audience, the New Zealand Director of Education Clarence Beeby reported:

In New Zealand there is no selection at all for secondary education and, within the State system every child, whatever his ability, is free to go to the secondary school of his choice. (Beeby, 1956, p. 396)

Gary McCulloch's research in the mid 1980s made it very clear that this statement was not true then and had never been true. Despite an official policy of non-selection, and the underpinning maxim that wherever a child went to school, she or he would get the same education, McCulloch clearly exposed the class and ethnic bias of the schooling system of the time. His historical analysis of Auckland school board records demonstrated a systematic struggle by schools, school inspectors and middle class parents to shape the ground to maintain clear systems of privilege in secondary schooling (McCulloch, 1989, 1990).

Until 1989 that struggle was played out in a series of negotiated but informal agreements over zone boundaries worked out between schools and education authorities at a regional level. The 1989 education reforms, however, made sweeping changes to the schooling system, including a complete rewriting of the Education Act. The regional boards were abolished in favour of school-based governance by elected Boards of Trustees who were parents of children at the school. New rules around school enrolments were also included in the legislation. Essentially, the new legislation devolved the responsibility for school enrolments to individual schools, and that is where it has lain ever since.

However, this is far from the whole story. The school enrolment legislation was to be altered three more times between 1991 and 2000, reflecting an ongoing struggle between parental power and school power. Should schools be allowed to select students as they wish, or should certain parents have a legislated right of entry? In terms of the continuum described at the beginning of this paper, the notion that schools should be able to choose students in order to maximise their position within the educational market is positioned a long way towards the 'private' end of the spectrum, whereas parental choice, which in its public form views schools as in the service of the 'public', is significantly towards the 'public' end, albeit in a deregulated environment. The four phases of the legislation are described below, and they are produced here in table form.

The 1989 legislation required all schools that were likely to exceed their agreed roll maxima to define a 'home zone' within which all children would have automatic acceptance by the school. If there were places left over, and more people

Table 2 Legislation governing enrolment in New Zealand schools

|      | Schools with enrolment schemes  | Schools without schemes |
|------|---|-------------------------|
| 1989 | Geographic home zone defined<br>Out-of-zone places filled by ballot   | Open entry              |
| 1991 | No rules specified for filling places<br>Criteria for enrolment to conform to various Acts                      | ↓                       |
| 1998 | Three key concepts: consideration of network of schools,<br>'reasonable convenience' and community consultation |                         |
| 2000 | Home zone defined<br>Out-of-zone places filled by ballot<br>Sibling, staff children and special place priority  |                         |

applying for places than were available, schools were required to allocate these by a simple ballot of all students wishing to enter the school. This system, while enshrining geographical selection, made it impossible for schools to apply rules of selectivity to out-of-zone students wishing to enrol. Power over the enrolment scheme was very much in the hands of the Secretary of Education, who could fix the maximum roll, put an enrolment scheme in place and cancel it by written notice. The schools had the power to conduct the ballot, although even this was heavily regulated. The ballot had the advantage of being formally fair, however, and assuming it was an open process, unlikely to be subject to corrupting practices.

The 1989 legislation lasted only two years. In 1991 a new Conservative government adopted what was essentially a free market approach to school admissions. Nearly all of the legislative requirements governing school selection were abolished. For the first time, too, primary schools were brought into the legislation, paving the way for selectivity at the primary level.

Under the new 1991 Education Amendment Act, schools were obliged to enrol any eligible person unless they had an enrolment scheme in place. Such schemes could only be adopted by the Board if:

- (a) It [was] satisfied that unless the scheme is put in place there is likely to be overcrowding at the school; and
- (b) It [did] so for the purpose of avoiding overcrowding at the school; and
- (c) The scheme [did] not have the effect of excluding from the school more prospective students than it is necessary to exclude to avoid overcrowding at the school.

(Education Amendment Act, No, 1, 1991 clauses 11A (2) (a), (b) and (c))

To put in place such a scheme, the Secretary of Education must have agreed that overcrowding was 'likely', and the Board must have adopted the scheme and published its 'nature and effect' in a local daily newspaper. In practice, enrolment schemes during this period varied dramatically between schools. Some completely



abolished any geographical zone at all, selecting students according to a variety of listed criteria, while others maintained their earlier (pre-1989) catchment areas.

Two things were particularly absent during this period, which were eventually to cause the government to re-regulate in 1998. The first was the failure by individual schools to consider (or need to take into account) what came to be called the 'network of schools'. This exhibited itself most in the distortions over geography, where children living virtually next door to one school found themselves, especially in Auckland where schools were very full, having to travel past three or four schools because of differing entry criteria. As the enrolment scheme had most effect at the 'top end' of the market, the government found itself under pressure from the middle classes to force schools to admit children living nearby.

The second problem, which again existed only in some schools, was the complete lack of transparency in the enrolment process. While schools were in principle bound by New Zealand laws, including human rights legislation, in practice there was no requirement by schools to disclose the basis for their decisions. While no one attempted legal action against an enrolment decision, there were a number of high-profile media stories that gave grounds for concern. The best-known case involved a Christchurch businessman who attended a selection interview at Christchurch Girls' High School, a prestigious and highly sought-after single-sex state school, with his daughter, who was half-Japanese. Despite her abundant qualifications she was not offered a place. He made local and national headlines by publicising the lack of transparency throughout the selection process. While he did not accuse the school of racism, he could not be sure the decision to reject his daughter was not made on racial grounds. He and others formed the Christchurch Girls' High Rejects Association, which had a short but high-profile life as a lobby group.

The free market in enrolment legislation was effectively unworkable in practice, although the 1998 legislation attempted to resolve the issues around enrolments with the minimal possible intervention. It made four changes to the 1991 Act, including a requirement that schools reflect 'the desirability of students being able to attend a reasonably convenient school'. In practice, this essentially meant that full schools needed to specify a zone, needed to have their enrolment schemes approved by the Secretary for Education, that the Secretary had to take into account 'reasonable use of the network of schools' and that schools consulted with local communities when developing their schemes (even though the results of the consultation were not binding on the school).

These changes were minimal but they enshrined two important principles: schools were part of the community, and required to serve the community's interests; and there was an acknowledgement of the needs of the school *system* over and above the wishes of individual schools acting autonomously. The hidden hand apparently did not work in regard to school enrolments, and the government was forced to step in.

The 2000 changes, made by a newly-elected Labour-Alliance Government, were made not only because of the failure of the 1998 legislation, but also for political reasons. Labour had introduced the first ballot system in 1989 and were determined to re-introduce it to prevent schools cream-skimming top students a practice which

had caused growing inequalities between schools (see Lauder *et al.*, 1999). The legislation in 2000, however, was significantly more prescriptive than the 1989 legislation.

The Education Amendment Act 2000 kept the 1998 rules regarding 'reasonable convenience' and 'network of schools'. Schools would have a home zone defined by geographic boundaries, in which all eligible children would be entitled to attend as of right. If additional places were available, students outside the zone would be selected in the following order of priority:

- (a) first ... any applicant who is accepted for enrolment in a special programme [<sup>3</sup>] run by the school;
- (b) second ... any applicant who is the sibling of a current student of the school;
- (c) third ... any student who is the sibling of a former students of the school;
- (d) fourth ... any applicant who is a child of an employee of the Board of the school;
- (e) fifth ... all other applicants.

These latter applicants, all others, were to be selected by a ballot 'conducted in accordance with instructions issues by the Secretary under section 11G [of this Act]' (all quotes from Education Amendment Act 2000).

At the time there was significant opposition to this Act, particularly from a group of Auckland schools that had dominated the system in that city and used the selective possibilities of the 1991 and 1998 Acts to the fullest extent. Their main argument, which echoes the arguments of voucher advocates, was that the legislation was depriving bright children from poor areas access to the best education available. It is clear that the current situation is a continued site of struggle, and that no settlement has been reached.

## **Conclusion**

Even without the re-awakening of the vouchers discourse, the public/private struggle over educational provision and funding continues in the New Zealand schooling system. This paper has demonstrated that recent policies have, in some areas, seen a move away from the free market position towards a more balanced perspective. But that shift only began because there were demonstrable and marked injustices in the free market system, underscoring the finding of McCulloch's research that, if left to themselves, schools will seek to maximise their middle class composition (and confirm Toynbee's observation, which begins this paper, that the middle class congregate when they can). The legislation in 2000 forced popular schools to serve their local community, and replaced out-of-zone selection with a ballot system, essentially removing the possibility of cream-skimming. It did nothing, however, to move the schools back towards co-operative agreements or coordinated zones. The market is alive and well, although it would appear that the 'Wild West' conditions of the 1990s have been moderated and replaced with a slightly more responsive approach.

But the struggles are not over. There is no political consensus over the final positioning of education on the public/private continuum in New Zealand, England, the US or other countries, which all seem to be caught in the midst of constant educational

reform. In a speech to the New Zealand National Party conference in July, a potential Education Minister in a conservative government, called for 'fewer rules, local flexibility and parent's (sic) choice' (English, 2004, p. 8).

Whereas in the previous decade and a half debate has revolved around the degree of control and regulation of school zones, the new push towards vouchers that is currently gathering momentum is driven by various elements of the grand coalition discussed at the beginning of this paper. Voucher advocates are now able to point to the significant support of disadvantaged communities in the US for voucher systems as a means of escaping the ingrained poverty and inequality of inner-city state schools (Kozol, 1991). In England, the New Labour Government has made noises towards a 'parent passport' scheme similar to Sweden's voucher system (which has spawned nearly 800 new private schools in 12 years) (Baker, 14 November 2004). There are strong reasons emerging from the research literature about why it is important to resist and oppose a shift along the privatisation continuum towards vouchers and the potentially large increase in private provision it entails. Saporito notes, in line with most such research, that:

Programs that allow the unfettered movement of children across schools will exacerbate existing race and class-based segregation in traditional, local neighbourhood schools that children leave, further deteriorating the educational conditions faced by the most disadvantaged schools. (Saporito, 2003, p. 198)

In the context of school systems across nations that are structurally unequal, vouchers, especially if they allow for profit-making private schools to be funded from the public purse, will further increase segregation and inequalities in school outcomes.

For the foreseeable future, the politics of education will remain bounded by debates about the proper mix of public and private funding, provision and regulation. This paper has merely scratched the surface of these issues.

## Notes

- [1] The Education Group of the Centre for Contemporary Cultural Studies (EGCCCS, 1981) originally suggested using the notions of crisis and settlement as a way of understanding education policy and policy history.
- [2] In 1990 the NZ Business Roundtable 'brought out to New Zealand one Stuart Sexton, a British lobbyist well known in his home country for his extreme neo-liberal views on education. He was, and is one of the leading advocates of a market system of vouchers' (Gordon, 1992, pp. 285–286).
- [3] Special programme means a programme, or a programme of a type, that the Secretary has, by notice in the Gazette, approved as a special programme, and:
  - (a) that provides:
    - (i) special education; or
    - (ii) Maori language immersion classes; or
    - (iii) any other type of specialized education to overcome educational disadvantage; or
  - (b) that is a programme:
    - (i) that takes a significantly different approach in order to address particular students needs; and

- (ii) that would not be viable unless it could draw from a catchment area beyond the school's home zone; and
- (iii) to which entry is determined by an organisation or process that is independent of the school.  
(Education Amendment Act, 2000, s11B).

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