

The Maine View

Published by The Maine Heritage Policy Center

Vol. 6, Issue No. 4

May 19, 2008

Reorganization and the Threat to Maine's Tradition of School Choice

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Before adjourning its recent session, the state legislature approved a much-needed and long-awaited bill to fix some of the technical and other issues with the controversial school district reorganization law passed last year. With that done, reorganization planning committees across the state are going back to work, racing to comply with consolidation deadlines. As regionalization efforts continue, school choice supporters and those families that currently enjoy school choice opportunities should remain vigilant. District consolidation efforts have already meant the end of some school choice options in the Bath area, and they may threaten opportunities for a choice of schools elsewhere.

Findings:

- School choice options have existed in a number of Maine communities for generations, a legacy of the days when many towns did not operate their own schools. Such municipalities “tuition” their students to schools in nearby towns. In most communities of this type, parents and students can choose the school they wish to attend, with the tuition paid for by the town, up to a certain rate established by the state. In this way, students in many Maine communities enjoy educational options of the very kind advanced by school choice advocates across the nation.
- Despite promises that such opportunities for a choice of schools would be preserved during the reorganization process, school choice options have been limited or eliminated in a number of reorganization proposals, including one that has already been approved by the education commissioner. Voters may be asked to approve plans of this kind within weeks.
- A number of other reorganization efforts have yet to fully develop their school choice policies. As there are several reorganization proposals that would merge choice and non-choice districts, school choice options are potentially threatened in many areas of Maine where reorganization plans have yet to be finalized.
- As written, the provision of the reorganization law that protects school choice will ultimately result in some students within a new regional school unit having a choice of schools while others do not. This has been problematic for reorganization planners, some of whom have worked to find a way around the law’s protection of school choice options as a way of advancing reorganization proposals.
- A careful review of state statute reveals an apparent loophole in the law, which appears to allow school choice to be curtailed or eliminated through the use of tuitioning contracts. Such contracts have been used in the past to limit school choice options in some communities, and are apparently under use again to circumvent the reorganization law’s intended protection of school choice options.
- School choice in Maine is not simply a tradition dating back generations, but has been proven both in Maine and elsewhere to improve student performance outcomes, especially among disadvantaged students, while saving tax dollars.

Introduction

With all the uncertainty and confusion that continues to surround the ongoing school district consolidation effort, it may have escaped the attention of many that among the promises of the district reorganization law was ongoing protection for school choice options where they exist in Maine. On the third page of the sixty-page school district reorganization law passed last year “the preservation of opportunities for choice of schools” is identified as being “the declared policy of the state.”[1] The Department of Education’s school district reorganization webpage says clearly that “Communities that have choice for their students now will continue to have choice after reorganization.”[2] Not long after the reorganization law’s passage, Education Commissioner Susan Gendron was quoted by the Kennebec Journal as confirming that “school districts currently without their

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own high schools, which give their students a choice of which area high school to attend, can continue to offer school choice even if they join a new Regional School Unit (RSU) with its own high school.”[3]

The message from both the legislature and the commissioner could not be clearer – opportunities for school choice that existed prior to reorganization, most of which have existed for generations, will continue after reorganization. Unfortunately, that is not what is going on as regionalization plans are being developed across Maine. School choice, though protected under the new law, is under assault.

- The education commissioner has already approved a planned merger of Maine School Administrative District (MSAD) 16, Monmouth, Richmond, and Dresden. Under the plan, high school choice for Dresden is to be limited to only 15% of high school students, with the remaining 85 percent to have no choice but to attend Hall-Dale High School in MSAD 16. While approximately that percent of Dresden’s more than 100 high school students attend Hall-Dale today, it has not always been so high a percentage. According to data on the state’s School Profiles website, as recently as the fall of 2004 only 71 percent of Dresden’s students attended high school in MSAD 16, with the remainder attending five other high schools.[4]
- The reorganization plan for the towns of Durham, Pownal, and Freeport dated March 11, 2008 would ultimately eliminate school choice for both Durham and Pownal. Under the provisions of the plan, school choice opportunities are to be “grandfathered” for certain students already in the system. Once these students have graduated, school choice will be eliminated. As recently as 2004, the almost 70 high school students from Pownal attended seven different high schools, while the 200-plus high school students in Durham attended 10 different high schools. The proximity of these two towns to so many high school options has made them among the best communities in Maine for school choice.[5]
- A grandfathering provision is also being put into place in the RSU being developed for MSAD 23 and Hermon. In recent years, high school students from MSAD 23 have attended as many as six different high schools under a “waiver” system. Under the provisions of the reorganization plan, however, existing waivers are to be grandfathered, after which time no more waivers will be granted, thus eliminating school choice options entirely for the almost 300 students in MSAD 23 who have that option today.[6]
- That same strategy is being employed by opponents of choice in MSAD 38 in Dixmont and MSAD 48 in New-

port, who are looking to form an RSU there. Like MSAD 23, MSAD 38 has historically allowed choice using a waiver system. As a result, the 125 high school students from MSAD 38 currently attend six different high schools. The reorganization plan under discussion there would eliminate such waivers, forcing all MSAD 38 high school students to attend high school in MSAD 48, with which MSAD 38 has historically had a tuitioning contract.[7]

- In a PowerPoint presentation that the commissioner used during the regional meetings she held last summer, one presentation slide read “Students who have school choice now will continue to have school choice, whether or not there is a contract, even if they join an RSU with its own high school.”[8] Despite this promise, the presence of such contracts is being used to proactively limit choice for students in new RSU’s. The reorganization plan that would merge Bucksport, Prospect, Verona Island, and Orland, for instance, contains a provision limiting choice in Orland to only 40 percent of its high school students. A contract already in place mandates that the other 60 percent of Orland’s 118 high school students attend Bucksport High School. This provision will be included in the RSU plan for that region.[9]
- The same may be happening in the towns of Minot and Mechanic Falls, whose students attend three different high schools. A contract in place there limits choice to only 10 percent of students. That provision may end up being included in the RSU proposal for that region.[10]

Choice remains an issue for others.

Most reorganization plans are far from complete, meaning that reorganization planning committees (RPC’s) have yet to deal with the school choice issue in any meaningful way. In still other places, choice itself has become something of a barrier to reorganization efforts.

- In southern Penobscot County, the towns of Glenburn and Veazie, which both have choice, are planning on merging with Orono, which does not. There is no indication of the direction the RPC may take regarding choice there.[11]
- In southern Hancock County, Deer Isle and Stonington do not have school choice, but are looking to consolidate with the towns of School Union 93, which do have choice. Little progress has apparently been made regarding the future of choice in that area.[12]
- The town of Arundel is merging with Kennebunk and Kennebunkport, and while the protection of school choice seems secure for Arundel, whose students attend seven different high schools, the most recent reorganization plan contains no guarantees that it will continue.[13]

- In its search for consolidation partners, the town of Acton, whose 120 high school students attend four different high schools, has been repeatedly rebuffed by neighboring districts, in large part because of Acton's concerns about limiting school choice options for its students.[14]
- In northern Hancock County, one the state's "hotbeds" of school choice, towns like Orrington, Holden, and Dedham have approached reorganization with a great deal of wariness, worried that choice may be lost for them as a result of joining larger systems such as Brewer.[15] Given what has been going on, their fears may be well-founded.
- The 260 high school students in the town of Raymond currently attend seven different high schools, yet Raymond has debated putting school choice out to a vote of the people in anticipation of its merging with Windham, keeping open the possibility that choice there may be phased out there or ended entirely.[16]
- In central Kennebec County, the towns of China and Vassalboro are among the leading school choice communities in the state. The 550 high school students in the two towns attend ten different high schools. Yet negotiations among the various towns that surround them have been long and arduous, in part because of the remarkably strong commitment to preserving school choice options that the two towns have demonstrated.[17]

Background - School Choice in Maine

For many Maine communities, having a choice of schools is a tradition that dates back to the days before most towns even had a school.

In response to the national movement toward universal public schools that took place in the late 1800's, the state of Maine mandated that each town provide a free public education to every child within its jurisdiction. Because so many Maine towns were simply too small to build and maintain their own schools, there evolved a practice whereby towns could meet their obligation under the law by having the children in the town attend school in a nearby community, with the "sending" town paying "tuition" for each student to the "receiving" town.

Because so many schools operating in those days were private, the practice arose of having public taxpayer dollars sent to private schools. That tradition continues today, with some of the very same private "academies" still educating students at public expense. State law forbids the use of public tuitioning dollars at religious schools.

During the school consolidation movement of the 1950's, many Maine communities banded together into School Administrative Districts and then built and maintained their own schools, thus eliminating the need for tuitioning. Still, the

practice remains in place, with some 12,000 students each year "tuitioned" to schools outside their own community.[18]

School Choice and Tuitioning Contracts

Not all students tuitioned in this way have a choice of schools to attend. Many towns use what is known as a tuitioning contract, by which a town agrees to send all of its children to a specific school. This is often done in exchange for lower tuition rates, and to simplify administration and transportation. Under these so-called "exclusive" contracts, students have no choice of schools, though some towns offer "waivers," such as those offered by MSAD 23 and MSAD 38, which allow some students to attend a school other than the one with which the town has a contract. Other towns have no limits on choice opportunities, allowing students to attend any state-approved school of their choosing, public or private.

As it turns out, the presence or absence of these contracts has become a major issue in determining whether school choice will continue under reorganization.

Choice and Reorganization

The current reorganization effort is very much like the consolidation effort of the 1950's, in that the goal is to create larger, more efficient school districts. Under the new law, all school districts must be a minimum size, and all must include a "publicly-funded high school," which is defined in the law as either a traditional public high school or a private school in which 60 percent or more of the student body is publicly funded through town tuitioning.[19]

It was clear from the start that mandating a publicly-supported high school in each new regional district could potentially mean the end of school choice options under the tuitioning system, since all Maine towns would become part of a district with its own high school. However, because the highly controversial reorganization law needed as much political support as possible to make it through the legislative process, its backers included language allowing for the continuation of school choice options where they had existed previously.

This seemingly simple solution to the school choice problem was no real solution at all, since the end result of such a policy would be to combine choice and non-choice towns together in a single district. As reorganization planners have come to discover, the prospect of some children in the new regional districts having a choice of schools while others do not has emerged a barrier to reorganization efforts in many places. Data from the reorganization plans makes clear that in response, some reorganization planners are trying to work around the law's provisions securing school choice, with the result that choice will indeed be lost in a number of communities.

How is choice being taken away?

If the law preserves choice, then how is choice being elimi-

nated? It appears that the wording of the new law has created a loophole related to tuitioning contracts. This is being used by choice opponents to eliminate choice prior to reorganization. Simply put, districts are attempting to enact new tuitioning contracts prior to reorganization that would “lock out” school choice moving forward.

Section 1479 of the reorganization law reads as follows:

“A student who resides in a school administrative unit that does not maintain that student’s grade from kindergarten to grade 12, and that does not enter into a contract for the education of its students pursuant to this chapter, has the option of attending a public school in another school administrative unit or private school approved for tuition purposes subject to the provisions of chapter 219 if that option was available from the previous school unit for the area in which that student resides.”[20]

In other words, if a town does not tuition students to a certain specific school under some kind of contract, those students continue to enjoy the choice of schools they’ve always had. If there is such a contract, however, school choice will only remain if no changes are made to the contract prior to the new RSU becoming operational. If an existing contract expires after July 1, 2008, the RSU can negotiate a new contract, but it cannot then eliminate school choice.

What appears to be happening is that in anticipation of the development of the RSU’s, reorganization planners are writing new tuitioning contracts that phase out or eliminate school choice. What is happening in SAD 38 is a good example of this. Choice opponents there want to develop a new contract that does not contain tuition waivers, so that school choice will be lost once the RSU is formed. It appears as though that is what Durham is doing as well, developing a new contract with Freeport that phases out choice.

Indeed, it appears as though choice is only preserved under the law for those choice districts that do not have tuitioning contracts, or those which make no choice-eliminating changes to the contracts they do have prior to July 1. Therefore, the absence or presence of a tuitioning contract seems to have become a deciding factor with regard to whether a town will continue to have school choice or not.

Contracts and School Choice

This feature of the reorganization law seems to fly in the face of previously existing, and seemingly contradictory state law. Section 2701 of Title 20A, which governs the creation of tuitioning contracts, reads as follows:

“The legislative body of a school administrative unit other than a school administrative district, which does not maintain any of the grades from kindergarten to grade 12, may authorize its

school board to contract with another school for school privileges for all or a part of its resident students in those grades for a term of 2 to 10 years.”[21]

This would appear to establish that tuitioning contracts, at least those authored by districts that are not SAD’s, can indeed limit choice, in that such contracts can cover “all or part” of the resident student population.

But, sections 5203 and 5204 of Title 20A describe the rights students have to “to attend school in another administrative unit.” Subparagraph 3 of these sections (one is for elementary students, the other for high school students) reads as follows:

“Students whose parents reside in a school administrative unit which contracts for school privileges under section 2701 may attend the contract school. The school administrative unit in which their parents reside shall pay the cost of the contract.”[22]

Students may attend the contract school, but they are not forced to. Contracts, it would appear, are not intended to place limits on school choice. They are put in place so that school units that do not operate their own schools can be assured that they have some educational placement for all their students, as they are required to by law. Over the years, some communities appear to have grown comfortable with “exclusive” tuitioning contracts that limit choice, but it is hard to see how sections 5203 and 5204 of Title 20A can be interpreted in any way other than to allow students in tuition-contracting districts to have a choice of schools. It is a wonder that such choice-blocking “exclusive” contracts have not been challenged in court under this provision of the law.

Nevertheless, the limiting of choice through the manipulation of tuition contracts appears to be what is going on, and opportunities for a choice of schools are being eliminated, despite the fact that the law clearly states that the preservation of such options is the “declared policy of the state.”

What can be done?

Unfortunately, it is too late for a legislative fix for this apparent inconsistency with regard to the preservation of school choice. In the absence of such a change, the options appear to be few.

- Making the concerns of school choice supporters heard at local reorganization planning meetings might be enough to dissuade RPC’s from eliminating choice from their reorganization plans. Such actions should be coordinated and undertaken by choice supporters as soon as possible.
- The commissioner is granted some leeway with regard to the approval of RSU plans, and, if so inclined, could perhaps rely on the provision of the law that identifies the “preservation of opportunities for school choice” as “the

declared policy of the state” to refuse to approve RSU plans that limit choice where it once was, contract or not.

- According to section 1351 of Title 20-A, tuitioning contracts are adopted by school boards, but the authority the boards have to enter into a tuitioning contract comes from the legislative body, which is the people.[23] In theory, citizens could collect signatures enough to force a referendum vote or emergency town meeting to repeal the authority granted to the school board to enter into tuitioning contracts. Whatever contract is in place now, assuming there is one, would remain in place.
- The vote of the people is also required to ultimately enact the RSU plan. A vote against a choice-eliminating RSU proposal would save school choice, but might result in penalties from the state for non-compliance with the reorganization law. The town of Georgetown took that heroic step last fall when voters there refused to support the town’s inclusion in RSU 1, the plan for which eliminated high school choice options. As a result, Georgetown retained school choice, whereas the towns of Arrowsic, Phippsburg, West Bath, and Woolwich, all of which once allowed a choice of high schools, joined RSU 1 and no longer have such choice options.
- There are legislative changes that could be made once the legislature convenes again in January, though it would obviously be far tougher to “re-enact” choice after the RSU’s have already been approved by voters.

- There is also the effort to repeal the reorganization law, which is still underway and which would place a repeal of the entire law on the November 2009 ballot. Supporters of that effort are still gathering signatures.

Conclusion

Why is school choice meaningful for students and families? It is not simply that it is a timeless Maine tradition. Recent research by the Milton and Rose Friedman Foundation found that Maine’s school choice program improved student outcomes, regardless of the socio-economic status of the students, while saving taxpayer dollars. In fact, they found that in order to match the performance gains that resulted from school choice, taxpayers would have to spend an additional \$900 per student, and this was in 2002.[24] These findings are consistent with studies of school choice elsewhere, which have similarly found improved student performance as a result of the innovative and entrepreneurial spirit that choice and competition bring to the mission of educating. In particular, several studies have found that school choice improves performance among disadvantaged and minority students.[25]

Understanding the value of school choice, many legislators supported the regionalization law in part because of the promise to protect school choice where it now exists. That promise has been broken. Opportunities for choice of schools, which the reorganization law establishes as a “declared policy of the state,” are being lost. School choice supporters will need to act very quickly to ensure the continuation of this important Maine tradition, one that has resulted in better schools for so many Maine students.

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