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**OPEN ACCESS FOR PARENTS TO AN
EDUCATION NETWORK (OPEN): AN
OPEN-DATA POLICY TO IMPROVE THE
EFFECTIVENESS AND EQUAL
UTILIZATION OF SCHOOL CHOICES AND
OPEN ENROLLMENT OPTIONS ACROSS
THE EDUCATION LANDSCAPE**

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Abstract: This white paper was selected as the winning entry for the 2015 NYU Journal of Legislation & Public Policy Legislation Competition, and aims to explain to advocates and provide them tools to use when talking to legislators about the attached draft bill. The Legislation Competition asked participants to develop and submit model state legislation to address a specific policy issue identified by the Legislation Competition Committee and further submit a white paper to supplement the draft bill. Entries were reviewed by the chairs of the Legislation Competition Committee who rated entries on criteria such as originality, creativeness, quality of submission, and viability of proposal.

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OPEN ACCESS FOR PARENTS TO AN EDUCATION NETWORK (OPEN)

*An open-data policy to improve the effectiveness and equal utilization of school
choice and open enrollment options across the education landscape*

Robin C. Burrell

PARENTS NEED INFORMATION TO MAKE INFORMED EDUCATION DECISIONS



The question of educational equity often boils down to the simple issue of which schools students have the opportunity to attend. In his 2007 concurring opinion in *Parents Involved in Community Schools v. Seattle School District No. 1*, Justice Kennedy highlighted the nation’s “moral and ethical obligation” to ensure “equal opportunity for all its children.”¹ At their core, student assignment plans, which in broad terms facilitate students’ attendance at schools outside their neighborhoods,² aim to improve academic achievement by opening the doors of successful schools to all students.³ However, education reform advocates are sharply divided on the question of which student assignment system can best ensure equal educational opportunities across America. States have implemented a number of strategies, including open enrollment plans in public schools based on parental preference, public charter schools, affordable private schools, and magnet schools.⁴ Regardless of local strategy choices and strong political, religious, and social beliefs about the effectiveness of various reforms, parents across the country want and need to make informed decisions about school placement for those systems to function as

¹ *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797 (2007).

² See, e.g., Lia B. Epperson, *True Integration: Advancing Brown’s Goal of Educational Equity in the Wake of Grutter*, 67 U. PITT. L. REV. 175, 221–22 (2005).

³ See Erica J. Rinas, *A Constitutional Analysis of Race-Based Limitations on Open Enrollment in Public Schools*, 82 IOWA L. REV. 1501, 1518 (1997).

⁴ For a useful definitional background describing the key components of each type of school choice, see generally JENNIFER DAVIS, COUNCIL OF CHIEF STATE SCH. OFFICERS, SCHOOL CHOICE IN THE STATES: A POLICY LANDSCAPE (2013), www.ccsso.org/Documents/2013/Choice_by_State_2013.pdf.

planned. Nevertheless, school choice and open enrollment plans in place today do not provide parents with the information necessary for those programs to achieve their goals.

WITHOUT ACCESSIBLE INFORMATION SCHOOL REFORM BASED ON CHOICE IS
FUTILE

A majority of states and districts have implemented some level of voluntary or mandatory open enrollment or school choice plan into their student assignment system. All but two states have either an interdistrict or intradistrict open enrollment plan in place.⁵ Fifty-five percent of school districts allow the broader category of some form of school choice, a number that has more than doubled in the last fifteen years.⁶ Yet, these policy initiatives do not provide their intended beneficiaries with the necessary tools to effectively take advantage of educational reform.

School choice plans rely on rational choice theory to understand parental behavior: they assume parents are “gathering information about the quality of services that schools offer” before making a decision on an optimal school system.⁷ Examining the 100 largest school districts in the country, the Brookings Institution found that successful choice programs require both “availability of rich and valid information on school performance” and “clear presentation of information.”⁸ If parents are unable to participate in efficient information gathering, the assumption underlying every form of school choice does not hold.

A major flaw in school choice policies is that the rapid gravitation toward choice-based programs has not been accompanied by complementary information-sharing regimes.⁹ Despite the foundational nature of accessible infor-

⁵ See *Open Enrollment 50-State Report*, EDUC. COMM’N OF THE STATES, <http://ecs.force.com/mbdata/mbtab8OE?sid=a0i70000006fu14&rep=OE132T> (last updated June 2013).

⁶ Grover J. “Russ” Whitehurst & Ellie Klein, *Is It Groundhog Day for School Choice?*, BROOKINGS INST.: BROWN CTR. CHALKBOARD (Feb. 26, 2015), <http://www.brookings.edu/research/papers/2015/02/26-school-choice-whitehurst>.

⁷ Mark Schneider et al., *School Choice and Culture Wars in the Classroom: What Different Parents Seek from Education*, 79 SOC. SCI. Q. 489, 490 (1998).

⁸ GROVER J. (RUSS) WHITEHURST & ELLIE KLEIN, BROOKINGS INST., BROWN CTR. ON EDUC. POLICY, *THE 2014 EDUCATION CHOICE AND COMPETITION INDEX: SUMMARY AND COMMENTARY 1* (2015), [http://www.brookings.edu/research/interactives/2015/~media/Multimedia/Interactives/2015/ecci/2014%20ECCI_web_FINAL.pdf](http://www.brookings.edu/research/interactives/2015/~/media/Multimedia/Interactives/2015/ecci/2014%20ECCI_web_FINAL.pdf).

⁹ As has been well documented elsewhere, choice in education is a centerpiece of modern American education policy. See, e.g., GROVER J. (RUSS) WHITEHURST & SARAH WHITFIELD, BROOKINGS INST., *THE EDUCATION CHOICE AND COMPETITION INDEX BACKGROUND AND RESULTS 2013*, at 4-5 (2014), <http://www.nabse.org/legislative/2013eccireport.pdf> (describing a “swing of the pendulum towards greater choice in education services,” which is theoretically designed to set

mation to an education system based on choice, parents across the country have struggled to obtain the necessary information to make decisions on educational options. To make informed decisions, parents need both administrative information on the availability and feasibility of various school choice options and substantive information on the desirability and opportunities available at different schools.¹⁰ Information asymmetry affects parents' ability to make decisions based on both those objective and more subjective factors. In four major cities, including our nation's capitol, over a quarter of parents reported being unable to find the information needed to choose "the best school for [their] child."¹¹ In five major cities, over thirty percent of parents cited confusion about their child's eligibility as a barrier to selecting a school.¹² The No Child Left Behind Act¹³ ("NCLB") was similarly stunted by insufficient distribution of information about Title I school choice programs.¹⁴ In a study commissioned by the Department of Education, researchers acknowledged that low participation in school choice "may be related to problems communicating with parents" because "[m]ost school districts did not notify parents of their school choice options before the start of the school year."¹⁵ Failure to inform parents of education options affects policy initiatives at all levels of government, from behemoth federal reforms like NCLB to localized education initiatives.

THE INFORMATION GAP LEADS TO MISUSE AND UNDERUTILIZATION OF CHOICE PROGRAMS

the stage for market-driven reforms). Officials and commentators have recognized, however, that the problem of meaningful parental notification continues to pose a significant obstacle. See sources cited *infra* notes 10–15 and accompanying text.

¹⁰ Ashley Jochim et al., *How Parents Experience Public School Choice*, CTR. ON REINVENTING PUB. EDUC. 3 (2014), http://www.crpe.org/sites/default/files/crpe_how-parents-experience-public-school-choice.pdf.

¹¹ *Id.* at 31.

¹² *Id.* at 22.

¹³ 20 U.S.C. § 6301 (2013).

¹⁴ Jay P. Greene et al., *You Can't Choose If You Don't Know: The Failure to Properly Inform Parents About NCLB School Choice*, 6 GEO. J.L. & PUB. POL'Y 7, 11 (2008) (citing the insufficient distribution of information to parents as the *primary reason* for low participation). See generally U.S. DEP'T OF EDUC., OFFICE OF PLANNING, EVAL. & POLICY DEVEL., POLICY & PROGRAM STUDIES SERV., STATE AND LOCAL IMPLEMENTATION OF THE *NO CHILD LEFT BEHIND ACT*, VOLUME VII—TITLE I SCHOOL CHOICE AND SUPPLEMENTAL EDUCATIONAL SERVICES, at xvi (2009), <https://www2.ed.gov/rschstat/eval/choice/nclb-choice-ses-final/choice-ses-final.pdf> (summarizing research findings that many parents in urban school districts were not notified about Title I public school choice programs).

¹⁵ U.S. DEP'T OF EDUC., OFFICE OF PLANNING, EVAL. & POLICY DEVEL., POLICY & PROGRAM STUDIES SERV., STATE AND LOCAL IMPLEMENTATION OF THE *NO CHILD LEFT BEHIND ACT*, VOLUME IV—TITLE I SCHOOL CHOICE AND SUPPLEMENTAL EDUCATIONAL SERVICES, at xvi (2008), <http://www2.ed.gov/rschstat/eval/choice/nclb-choice-ses/nclb-choice-ses.pdf> (analyzing communications between school districts and parents and finding that many parents lacked the most basic information necessary to make an informed decision, including data on the student achievement at available schools and, even more fundamentally, the availability of a transfer option).

There is a gap between the information that parents *need* to effectively take advantage of school choice programs and the information that parents currently *have* in an accessible format. Empowering parents as consumers in any education market, whether public, private, or some hybrid of the two, requires that parents have the ability to find and use information to make choices that hold schools accountable.¹⁶ If parents make the “wrong” decisions by selecting schools that do not meet their children’s needs, or if parents do not have sufficient information to even participate in choice-based programs, the system of accountability underlying the push for school choice evaporates.¹⁷ Analysis of parental decision making demonstrates that receiving information can “significantly increase[] the fraction of parents choosing higher-performing schools.”¹⁸ Not only can parents better select high-performing schools, but those same parents can also explore a breadth of factors that may be important to their families in selecting a school environment (e.g., school culture, security, or special programs).¹⁹ Closing the information gap can correct for both misuse²⁰ and low participation in school choice programs, thus affecting both the quality of and the overall participation in underutilized open enrollment programs.²¹

¹⁶ JACK BUCKLEY & MARK SCHNEIDER, CHARTER SCHOOLS: HOPE OR HYPE? 7–8 (2007).

¹⁷ JOSH CUNNINGHAM, NAT’L CONFERENCE OF STATE LEGISLATURES, ACCOUNTABILITY IN PRIVATE SCHOOL CHOICE PROGRAMS 5 (2014), <http://www.ncsl.org/documents/educ/AccountabilityInPrivateSchoolChoice.pdf> (“Many private school choice advocates believe the ability of parents to choose the school that best fits their child’s needs is a more effective way of ensuring private schools provide a quality education. . . . a standard legal definition of what a quality school means may not account for the individual needs of students and parents. Parents choose schools for a number of reasons including school culture, safety and special programs offered.”). The report also describes one of the policy initiatives of requiring private schools to publicly disclose various types of school information and policies—for example, school performance, written school discipline policies, tuition, and transportation options—to facilitate parent choice. *Id.*

¹⁸ Justine S. Hastings & Jeffrey M. Weinstein, *Information, School Choice, and Academic Achievement: Evidence from Two Experiments*, 123 Q.J. ECON. 1373, 1373 (2008) (researching the impact of the provision of information on parental decisions in an open enrollment program in the Charlotte-Mecklenburg school district).

¹⁹ See Cunningham, *supra* note 17, at 5.

²⁰ See, e.g., COWEN INSTITUTE, SPOTLIGHT ON CHOICE: PARENT OPINIONS ON SCHOOL SELECTION IN NEW ORLEANS 12 (2013), <http://www.coweninstitute.com/wp-content/uploads/2013/01/Choice-Focus-Groups-FINAL-small.pdf> (finding in a study of New Orleans parents that “misinformation is widespread” among study participants). For example, parents who participated in the New Orleans study “exhibited a high level of misinformation about schools’ admissions requirements and attendance zones”; and some “said they could not apply to the more popular open admissions schools because they didn’t live in the school’s district or didn’t meet the GPA standards, even when the particular school did not actually have either of these restrictions.” *Id.*

²¹ See Constance Hawke, *The “Choice” for Urban School Districts: Open Enrollment or Desegregation?*, 115 EDUC. L. REP. 609, 622 (1997) (analyzing the underutilization of open enrollment programs in Akron, Omaha, and Des Moines).

2015

QUORUM

77

The scarcity of easily accessible public information inordinately affects historically disadvantaged groups such as low-income and minority parents.²² Although parents across social strata look for similar characteristics when choosing schools for their children, different families frequently have disparate levels of information accessible to them.²³ Lower-income families have been shown to select schools with better academic performance records when choice forms mailed to their homes were accompanied by academic indicators such as test score comparisons across schools.²⁴ Educational trends indicate an increased gravitation toward choice-based school assignment processes, and it is clear that information systems need to keep up with the shifting landscape.²⁵

THE OPEN ACT CAN BRIDGE THE INFORMATION GAP TO MAKE CHOICE MORE EFFECTIVE

Open-data policies have already started making a positive impact in the education space. Governor Cuomo's Executive Order in March 2013, for instance, established a formal "open data" policy for the state of New York.²⁶ Shortly thereafter, the New York City Department of Education initiated the "School Choice Design Challenge," encouraging groups of software developers to use school-level data to create user-friendly applications (or "apps") to help families sort through the "stressful, difficult, and complicated" high school open enrollment selection process.²⁷ Contestant apps consolidated a number of indicators to allow families to run personalized searches to find schools tailored to their specific educational goals. Instead of paging through the New York City directory of high schools, a 557-page document,²⁸ parents can use the winning app to efficiently select important criteria and see matching results. In an era in which consumers can compare restaurants, flights, and real-estate listings at the touch of

²² Holly Yettick, *Information Is Bliss: Information Use by School Choice Participants in Denver*, 49 URB. EDUC. 2 (Sept. 24, 2014), <http://uex.sagepub.com/content/early/2014/09/23/0042085914550414.full.pdf+html> (Low income and minority parents may already be "disadvantaged when it comes to the amount and type of information they can access.").

²³ *Id.* at 3.

²⁴ Hastings & Weinstein, *supra* note 18, at 1383.

²⁵ See WHITEHURST & WHITFIELD, *supra* note 9.

²⁶ N.Y. COMP. CODES R. & REGS. tit. 9, § 8.95 (2013).

²⁷ Benjamin Herold, *N.Y.C. Turns to Open Data to Help with High School Choice*, EDUC. WEEK BLOG (Nov. 13, 2013, 4:11 PM), http://blogs.edweek.org/edweek/DigitalEducation/2013/11/nyc_turns_to_open_data_to_help.html; see also INNOVATE N.Y.C. SCHS., <http://nycdoe.pediacities.com> (last visited Mar. 5, 2015) (website of the arm of the NYC Department of Education in charge of the competition).

²⁸ N.Y.C. DEP'T OF EDUC., 2014-2015 DIRECTORY OF NYC PUBLIC HIGH SCHOOLS (2014), http://schools.nyc.gov/NR/rdonlyres/6EBFAB79-2001-48FA-8680-E494DF2CE20C/0/20142015HSD_FullDirectory.pdf.

a button, it is incumbent upon our public education agencies to facilitate the same standards for comparing school systems.

The OPEN Act focuses on improving accessibility for three distinct categories of information: (1) Test Scores and Academic Performance Data; (2) Practical and Logistical Considerations; and (3) Subjective Factors. When surveyed, parents emphasize academic quality as their top priority in making an education decision, even at the expense of convenience considerations like proximity to the home.²⁹ Academic quality, however, means different things for different families. While standardized test scores are the most frequently cited indicator of academic quality, some parents value curriculum offerings—including specialized language programs, Montessori, or individualized learning—as equally if not more important in the school comparison process.³⁰ Data access facilitates the aggregation of this potentially dizzying number of factors. The creation of an app that includes test scores among a number of other factors measuring education quality allows each consumer to isolate a sampling of individually valued characteristics.

The OPEN Act will promote personalization of the school choice process so that busy parents are not left to sift through 500-page reports filled with irrelevant educational information. Promoting the ability of an agent to individualize information will help avoid the reductionist mistake of targeting a parent based on one of the parent's demographic factors (e.g., ethnicity or social class) with information about only one specific school type. By allowing parents to individualize values, cities will be acknowledging that “[c]ulture is not passively reducible to one’s ethnicity, social class, gender, or religion,” but that it is instead “a ‘tool kit’ which people actively use to make sense of the world.”³¹ Understood this way, an app that particularizes the school choice experience for each parent recognizes that parents do not fit neatly into a box with a one-size-fits-all education pamphlet.

Where, however, do these cultural meanings come from? Culture is not passively reducible to one’s ethnicity, social class, gender, or religion. Rather, culture is a

²⁹ See Edward L. Glaeser et al., *What Do Parents Want? An Exploration of School Preferences Expressed by Boston Parents* (Harvard Kennedy Sch., Working Paper No. RWP13-024, 2013), <http://ssrn.com/abstract=2326711> (discussing a study that found that Boston parents preferred academic quality even at the expense of proximity); Jochim et al., *supra* note 10, at 17 (finding that between sixty and eighty percent of parents surveyed in eight major cities found academic quality more important than safety or location in school choice decisions).

³⁰ See PAUL TESKE ET AL., CTR. ON REINVENTING PUB. EDUC., *OPENING DOORS: HOW LOW-INCOME PARENTS SEARCH FOR THE RIGHT SCHOOL* 28 (2007), <http://files.eric.ed.gov/fulltext/ED495279.pdf> (finding that after test scores, “[c]urriculum or thematic focus” was the second most important factor in selecting a school, cited by nineteen percent of the sampled parents).

³¹ Robert C. Bulman, *School-Choice Stories: The Role of Culture*, 74 *SOC. INQUIRY* 492, 493 (2004).

“tool kit” which people actively use to make sense of the world Where, however, do these cultural meanings come from? Culture is not passively reducible to one’s ethnicity, social class, gender, or religion. Rather, culture is a “tool kit” which people actively use to make sense of the world Where, however, do these cultural meanings come from? Culture is not passively reducible to one’s ethnicity, social class, gender, or religion. Rather, culture is a “tool kit” which people actively use to make sense of the world

THE OPEN ACT IS COMPATIBLE WITH PRIVACY NORMS

Much of the debate in the K-12 public education space with respect to data focuses on student privacy concerns. In the last year, at least five state legislatures have passed student data privacy or security bills.³² This past January, President Obama proposed new legislation aimed at preventing companies from selling student information collected in schools to companies engaging in targeted advertising practices.³³ The proposed legislation distinguishes between data being used for purposes “unrelated to the educational mission” and data being collected in school for “important research initiatives to improve student learning outcomes.”³⁴ The OPEN Act falls into the latter bucket.

States can release datasets that do not contain student-level data, as the New York City Department of Education did in initiating its School Choice Design Challenge.³⁵ By not releasing data at the student level, states will remain in compliance with the Family Educational and Privacy Rights Act (“FERPA”) and

³² See *ECS State Policy Database: State Longitudinal Data Systems*, EDUC. COMM’N OF THE STATES, <http://b5.caspio.com/dp.asp?AppKey=b7f93000695b3d0d5abb4b68bd14&id=a0y70000000Cbt0AAC> (last visited July 9, 2015).

³³ Press Release, White House Office of the Press Sec’y, Fact Sheet: Safeguarding American Consumers & Families (Jan. 12, 2015), <http://www.whitehouse.gov/the-press-office/2015/01/12/fact-sheet-safeguarding-american-consumers-families>.

³⁴ *Id.*; see also NAT’L CTR. FOR EDUC. STATS., NCES 2011-602, DATA STEWARDSHIP: MANAGING PERSONALLY IDENTIFIABLE INFORMATION IN ELECTRONIC STUDENT EDUCATION RECORDS 2 (2010), <http://www.nces.ed.gov/pubs2011/2011602.pdf> (defining “personally identifiable information” to include a student’s name, the name of a student’s parent or family member, the address of a student or student’s family, a personal identifier (for example, a Social Security Number), an indirect identifier (for example, a student’s date of birth), or other information that is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty).

³⁵ See Herold, *supra* note 27; see also Sandra Moscoso, *Open Data Can Help Families with Confusing School Choices*, GREATER GREATER EDUCATION (March 4, 2013), <http://greatergreatereducation.org/post/17870/open-data-can-help-families-with-confusing-school-choices/>. Moscoso’s article acknowledges that some “school locator” applications have emerged to help families through the school choice process, but recommends that the D.C. Office of the State Superintendent of Education release raw data it already collects to allow coders like Code for D.C. and International Open Data Day make data accessible in the hopes that “D.C. families can one day soon have tools to help them through the difficult process of navigating school choice.” *Id.*

applicable state corollaries.³⁶ The Family Policy Compliance Office (“FPCO”) explains FERPA protection of individualized education data as ensuring that schools “have written permission from the parent or eligible student in order to release any information from a student’s education record.”³⁷ Although state legislatures will be struggling with the tension between FERPA and open-data policies in the coming years, the OPEN Act finds the balance between privacy values and information values by not disclosing “personally identifiable information from student records.”³⁸ Under the OPEN Act, education departments will not release personally identifiable information,³⁹ but will instead segregate for release the dataset indicators focusing on academic performance, logistical or administrative information, and subjective evaluations, with identifying information removed. The OPEN Act is consistent with FERPA.

CONCLUSION

Education reformers are deeply divided on the issue of what the most equitable way is to ensure that each child has an equal opportunity to an effective education. Equally polarizing is the issue of which indices are the most accurate in measuring a school’s effectiveness. The OPEN Act cuts across these divides. School selection programs of every kind rest on an assumption that parents engaging in the selection process have accurate and accessible information to make educated decisions. They require that parents can find the indicators that are important to their choices. By releasing datasets with school-level information (preempting parental privacy concerns) in Application Programming Interface (“API”) format,⁴⁰ education departments will allow the private sector to develop apps that promote parents’ active and informed role in the school decision process.

³⁶ Family Educational and Privacy Rights Act of 1974, 20 U.S.C. § 1232g (2013).

³⁷ See *Family Educational Rights and Privacy Act (FERPA)*, U.S. DEP’T OF EDUC. (Feb. 5, 2015), <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/index.html>.

³⁸ Mathilda McGee-Tubb, *Deciphering the Supremacy of Federal Funding Conditions: Why State Open Records Laws Must Yield to FERPA*, 53 B.C. L. REV. 1045, 1060 (2012).

³⁹ See NAT’L CTR. FOR EDUC. STATS., *supra* note 34, at 2.

⁴⁰ See *Open Data Handbook: Glossary*, OPEN KNOWLEDGE FOUNDATION, <http://opendatahandbook.org/glossary/en/> (last visited Mar. 5, 2015) (defining “Application Programming Interface” as “[a] way computer programs talk to one another” and stating that this interface “[c]an be understood in terms of how a programmer sends instructions”).

2015

QUORUM

81

APPENDIX
-----Open Access for Parents to an Education Network (OPEN)SECTION 1. SHORT TITLE

This Act shall be known and may be cited as the “Open Access for Parents to an Education Network Act” or “OPEN Act.”

SECTION 2. STATEMENT OF PURPOSE

(A) School choice or open-enrollment plans allow a student to transfer to a public school of his or her choice. Open-enrollment plans can be either intradistrict, allowing a student to transfer to another school within his or her district, or interdistrict, allowing a student to transfer to a school outside his or her home district.

(B) According to the Brookings Institution’s recent report on school choice, the number of school districts allowing some form of school choice or open enrollment has more than doubled in the last fifteen years. A majority of districts now give parents an active role in selecting schools for their children.

(C) School choice and open-enrollment plans depend on a parent’s ability to access relevant information about the available education options. One of the objectives of the No Child Left Behind Act of 2001 was to provide new educational options to parents whose children were in schools identified as in need of improvement, corrective action, or restructuring. The Act gave these parents the option of transferring their children to schools that had not been identified as in need of improvement, corrective action, or restructuring. To be successful, this provision requires that parents have access to sufficient information to request a transfer. In a 2008 study commissioned by the Department of Education on the implementation of the No Child Left Behind Act, low participation in the Title I school choice programs was attributed, in part, to insufficient distribution of information to parents. “Title I schools” are schools operating programs funded under Title I of the Elementary and Secondary Education Act of 1965 and are subject to the parental choice requirements of the No Child Left Behind Act.

(D) In a 2014 report, the Center on Reinventing Public Education surveyed parents and found that at least a quarter of parents reported struggling to find the information necessary to choose the best school for their children.

(E) In May 2013, President Obama signed an executive order directing federal agencies to make data available in a central repository. The goal of this order was to promote public access to information. In that same year, the New York City Department of Education initiated the “School Choice Design Challenge.” Using now-public information, this Challenge encouraged software programmers to develop applications that would help families navigate the New York City high school choice process.

(F) For choice-based student assignment programs to function effectively, the Legislature needs to direct our State’s Department of Education to release data that is usable by application developers. This release will promote the creation of applications that facilitate individualized school choice. The purpose of this legislation is to direct the agency administering the school choice plan to release relevant data to encourage information accessibility for our state’s parents to prevent misuse and low participation in open enrollment and choice plans.

SECTION 3. DEFINITIONS

(A) The “Department” means the State Department of Education, and encompasses any board, commission, and officer under the Department’s authority.

(B) “Application Programming Interface” or “API” means a dataset of commands, functions, and protocols that programmers can use when creating software for a specific operating system.

(C) “Choice Plans” means any voluntary or mandatory, inter-district or intra-district student assignment plan allowing a parent or legal guardian to select or apply to a school other than the school assigned by the location of the family residence.

(D) “Performance Measures” mean:

- 1) student performance on the National Assessment of Education Progress;

2015

QUORUM

83

- 2) student performance on the state comprehensive assessments;
- 3) high school graduation rates; and
- 4) the size of the academic achievement gap.

(E) “Curriculum” means district or school-adopted programs and written plans for providing students with learning experiences that lead to expected knowledge and skills and career and college readiness.

(F) “Student-Level Data” means any data that contains personally identifiable information from individual student records. The National Center for Education Statistics, housed within the Federal Department of Education, defines “personally identifiable information” to include a student’s name, the name of a student’s parent or family member, the address of a student or student’s family, a personal identifier (e.g., a Social Security Number), an indirect identifier (e.g., a student’s date of birth), or other information that is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

SECTION 4. THE DEPARTMENT IS DIRECTED TO RELEASE API SCHOOL-LEVEL DATA TO FACILITATE CHOICE PROGRAMS

(A) Pursuant to this Act, the Legislature directs the Department to release data in API format that meets the requirements set forth in subsection 4(B) for any K-12 school eligible for participation in the State’s Choice Plan within the Department’s jurisdictional control.

(B) The Department must include in the dataset indicators from the following three categories.

- 1) Test scores and academic performance data including, but not limited to, Performance Measures and Curriculum information.
- 2) Practical and logistical information including, but not limited to, school address, student enrollment numbers, classroom size, demographic information of enrolled students,

extracurricular offerings, enrollment deadlines, before and after school program availability, and morning start times.

- 3) Subjective factors including, but not limited to, teacher evaluations and learning environment evaluations.

(C) The Department shall not include any Student-Level Data in the dataset.

(D) The Legislature directs the Department to release the data in downloadable API format on the Department's webpage within 150 days of this Act's Effective Date.

SECTION 5. LIMITATIONS AND CONDITIONS

(A) Nothing in this Act shall be construed as providing authorization for additional spending by the Department.

(B) Nothing in this Act shall be read as requiring the Department to take any action inconsistent with the federal Family Educational and Privacy Rights Act or the corollary state student privacy statutes.

SECTION 6. SEVERABILITY

If any provision of this OPEN Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this OPEN Act that are effective without the invalid provision or application, and, to this end, the provisions of this OPEN Act are severable.

SECTION 7. EFFECTIVE DATE

This Act shall take effect immediately.

