

June 22, 2007

The Honorable Robert W. Harrell, Jr.
Speaker of the House
State House, 1st Floor West Wing
Columbia, South Carolina 29202

Dear Mr. Speaker and Members of the House:

I am hereby vetoing and returning without my approval H. 3124, R. 173. I strongly support the expansion of educational choice for all South Carolina students. Unfortunately, a close examination of this bill reveals that it would not provide true choice; it would inhibit it. H. 3124 would actually represent a step backwards in the education reform movement because it would create the illusion of reform where none would actually exist.

This bill in many instances would lock at-risk students into an under-performing school in South Carolina. It would prevent working families from having the educational choices now afforded to the people who can afford the right house in the right school district. This bill would codify the notion that the school rather than the parent should be in charge of picking which school is best for a child. This bill would come with mandates, exemptions and capacity limits that make it completely ineffective in solving the educational needs of the students who are most at-risk.

I would like to more deeply explore the three most fundamental flaws in this bill.

First, the choice provided by this bill would be far too limited to have any effect. School transfer capacity is set at three (3%) percent of the highest enrollment over the preceding ten-year period, and a school only has to admit one percent of its prior year's enrollment. As well, schools would have three years to hit even these miniscule enrollment numbers. We now have 86,900 students trapped in the 503 low-performing schools of the state, and a recent survey of the 73 higher-achieving schools showed that enough space would exist for only about 3 percent of the 86,900.

Both proponents and opponents of this bill acknowledge this lack of capacity. To his credit, Senator Grooms tried to address it through an amendment that would have provided very modest private-school scholarships to students enrolled in "needs improvement" public schools if: a) their family incomes were no more than twice the poverty rate; and b) their transfer requests to

better public schools had been rejected. This common sense amendment, however, was rejected, as was a similar amendment in the House offered by Representative Edge.

Second, this bill would establish a system in which choice is provided not to the parents who want and need it, but to the school districts and the State Department of Education. The experience of other states shows that real innovation from school choice programs is promoted from the bottom up, that is, by parents freely exercising a variety of choice options and deciding the best fit for their children. It is not the result of top-down decisions made by the school districts or the State Department of Education. This bill would set up such a top-down system by providing many subjective reasons for the school districts to deny parents education choice for their children. For instance:

- Section 59-62-20(1) lists various examples of what the term “school district choice programs” means, but does not mandate that the school districts make those choices available to all students at all grade levels.
- Section 59-62-20(4) provides that “only permanent building structures may be included in the calculation of capacity,” even in cases where the school is using non-permanent structures for its current population of students. For rapidly-growing school districts, portables are very common.
- Section 59-62-70 (B)(1) provides the school districts with the flexibility to offer only a fraction of the capacity that the state department inventory identifies them as having.
- Section 59-62-150 provides that the school districts’ open enrollment obligations are “contingent upon the appropriation of adequate funding as documented by a fiscal impact statement...,” with no indication of what “adequate” might mean.

In addition to the above, Section 59-62-70 provides the school districts not only with a list of reasons for denying a transfer request – lack of capacity, lack of equipment or programs, voluntary desegregation plans, low academic performance of applicant and applicant behavioral issues – but also with a very broad subjective catch-all that would justify a transfer denial if, in the judgment of the district, “the student does not meet established eligibility criteria for participation in a particular program, including age requirements, course prerequisites, or required levels of performance.”

What H. 3124 would essentially do is codify and provide legitimacy to the subjective process already being used by many higher-performing public schools to select their students in existing choice programs – a selection process that more often than not freezes out the at-risk students who are most in need of better education choices.

Making the school districts – instead of parents – the drivers for education choice is especially troubling in light of the districts’ failure to implement the public school choice provisions

mandated by No Child Left Behind (NCLB). Even though NCLB requires that children in schools failing to make Adequate Yearly Progress be provided opportunities to receive either choice or supplemental services, last year barely one (1%) percent of the students in South Carolina eligible for these federally-funded opportunities actually accessed them. Equally troubling is the fact that the State Department of Education has, at the end of the day, always allowed the school districts to spend the federal dollars that had been set aside for choice on their status quo programs.

If the school districts did not provide, and the State Department of Education did not insist upon, the public choice mandates of NCLB, then there is no reason to believe that things will be better under H. 3124, which would provide the school districts with far more reasons to deny transfers than NCLB does.

Third, H. 3124 would create unfunded mandates. Many school districts fund their schools above and beyond the local maintenance of effort requirements of the state because their residents are willing to provide and have the ability to fund costlier options in efforts to improve student achievement (for example, by funding lower teacher-student ratios). Students transferring to such a district under the new open enrollment program would bring with them certain state dollars that are “attached” to them (such as the Base Student Cost), but the district would not be reimbursed one penny of the additional local money it would then be forced to expend to maintain their higher school standards.

This unfunded mandate was both acknowledged and quantified in the legislative process; the estimate provided to the Senate was that it would cost districts receiving transferees a total of \$91 million dollars annually. Several legislators attempted to amend H. 3124 to hold the districts harmless from this unfunded mandate, but their efforts failed. As a result, I believe that the predictable response of the “receiving” school districts – even districts that truly want to include students who currently attend failing schools – would be to deny transfer requests in order to avoid the additional costs. I believe it is bad public policy to put these districts in such a position, yet that is an inevitable consequence given our present way of funding public education.

Despite these flaws, however, proponents of this bill say that it would still represent a first step toward the goal of providing more educational choices, and should, therefore, be enacted. I believe the opposite is true – that H. 3124 would be a step backwards. If we put institutions that have historically been hostile to choice in charge of implementing that choice – if we settle for a system that would both motivate and better enable our best public schools to resist transfer requests from at-risk students now in poorer districts – then the journey toward real choice will have been stalled.

In a purely political sense, it would be easier for us and more expedient to pretend that H. 3124 is a true choice bill. But if I added my signature to what amounts to a defeat for reform through a

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complex “bait and switch,” nothing would ever change, and real choice would come even more slowly, leaving our children to languish in last place and in underperforming schools.

We must be honest about where South Carolina is relative to other states. After all, it is those states that are our competition in attracting the companies that will provide jobs for our children, and businesses cite workforce competence as a top motivator in location of industry. One-half of our high school freshmen do not graduate on time, making South Carolina’s on-time graduation rate last in the nation. Of the students who do manage to remain in the schools, those who take the SAT and/or ACT score at the bottom in the nation. Studies show that South Carolina’s best and brightest children – oftentimes from the highest-income and best-educated families – are actually farther behind their peers nationally than our lower-performing, lower-income children are.

The one ray of good news in all this is that the debate on how to improve our system of public education has clearly shifted. In passing H. 3124, the General Assembly has acknowledged that reform must involve more education choices. In pushing for its passage, our newly-installed Superintendent of Education has said that more choices would lead to more competition and, in turn, to increased quality and a reduction of costs. We agree on this principle, but unfortunately H. 3124 would not provide real choices to parents or promote fair competition – and to pretend otherwise would be a disservice to the public.

For all of the reasons outlined above, I am vetoing H. 3124, R. 173, and returning it without my signature.

Sincerely,

Mark Sanford