

School Sorting and Disclosure: Disclosure to Families as a School Reform Strategy

Part I: Existing Practices and the Social Interests in School Information Disclosure

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Introduction

How and why are children assigned to specific third grade teachers? Would it be a good thing if public schools had formal mechanisms for informing parents about who makes those teacher assignments and about what criteria they use? Might it be even better if parents were told precisely how their own child's assignment is made? This is where we started. These questions, which no one else seems to have addressed, seemed important to us.

Surely the talent of a school's third grade faculty often will be markedly uneven, and, for any number of reasons, a particular teacher frequently will be considerably better suited than are the other third grade teachers to teach a specific child. Who one's classmates are (and are not) also can make a great deal of difference to the child's learning and experience. In short, it seems evident that just which children get which third grade teachers can be vital to a child's educational, indeed, life-long development.

In fact, this decision is often far more critical to a child than are other school decisions, which courts have held involve a child's constitutional rights. For example, students successfully have invoked the first amendment in order to curtail the discretionary authority of school officials to decide what sort of student expression of ideas will be permitted in the school;¹ and students have invoked successfully the due process clause of

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1. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969).

the fourteenth amendment in order to curb the discretionary authority of school officials to suspend pupils for misbehavior.² We do not deny the importance either of being prevented from wearing nondisruptive anti-war armbands or of being summarily suspended from school for a few days based upon allegations of unacceptable conduct. But surely the discretion of school officials to select one's third grade teacher is frequently of far greater moment.

Out of those musings, a study emerged. We quickly realized that we ought to be concerned about not only which teacher an elementary school pupil gets. Plainly, there are a number of other, perhaps equally critical, sorting decisions that are made for, and sometimes by, students as they pass through their years of elementary and secondary education and are parcelled out to schools, grades, courses, teachers and the like. Hence, we took all of what we call mainstream school sorting as our focus. (We use the phrase mainstream sorting because we elected not to study the special ways schools sort exceptional children — e.g., significantly handicapped children and children whose anti-social behaviors cause them to be assigned to special schools).³

To return to our original point, our basic perspective on school sorting is a rather special one. We did not set for ourselves the goal of trying to determine whether there was one best way (or several best ways under differing circumstances) for schools to do the sorting — or, in turn, whether students could somehow be given a “right” to the sorting decision that is in their best interest.

Rather, we decided to examine a more modest question: Ought families at least be told things about how the school and school district's sorting process works? It seemed evident to us, even before we began our research, that in certain cases the disclosure of information promised to have clearly beneficial effects. Suppose children were being assigned to third grade teachers based upon their reading and math abilities but, by mistake (or otherwise), one or more children were left out of the class for fast (or slow) learners; if parents were told of the assignment criteria, they might well realize the error and bring it to the school's attention. Or suppose that in making an assignment for a third grade child, a school prin-

2. *Goss v. Lopez*, 419 U.S. 565 (1975).

3. An important earlier work that examines educational sorting is Kirp, *Schools as Sorters: The Constitutional and Policy Implications of Student Classification*, 121 U. PA. L. REV. 705 (1972). There our colleague David Kirp was most concerned, however, with the special problems of children, especially minority children, who are excluded from school because of handicaps, dumped in isolated classes said to be for the mentally retarded, or permanently relegated to the bottom rung of a rigid school tracking system. In short, whereas our focus is on the mass of ordinary children, his attention was fixed on the relatively fewer children who were treated by school authorities as exceptional.

principal was unaware that an older sibling had had a very bad experience with the younger child's proposed teacher; were that brought to the principal's attention in a timely way, it might well lead to a different assignment and a far better experience for the younger child.

This look at what we call "school sorting and disclosure" also seemed a promising inquiry for us to undertake given both our skills and interests. "Information" is a matter of considerable concern to economists, and consumer disclosure laws are things that policy analysts and lawyers alike have often favored in other contexts. Moreover, we quickly saw the parallel to what the federal courts are doing with their due process decisions by requiring the communication of information about important decisions between government and interested citizens.⁴ Thus, our focus positions us to ask not only whether school sorting disclosure to parents would be good public policy, but also whether a good argument can be made that they already have a constitutional right to such disclosure, a right that is merely awaiting declaration by the judiciary.

But that is getting ahead of the story. This is the first of a two-part article. In Part I we first describe what we have learned about mainstream school sorting practices and what parents are now told about those practices. Following that, we analyze in a somewhat general way, the potential benefits and costs of imposing disclosure about sorting on the public schools. In short, Part I explores the broad bases upon which society might find it wise to require dissemination of this sort of information by the schools. We suggest that, given the current processes for making educational sorting decisions, there is much potential benefit from information disclosure, but that achieving these benefits depends upon keeping the costs of disclosure low. Part II, which will appear in the next issue of the *Journal*, provides an appraisal of the potential costs and benefits of required disclosure in specific contexts, and then explores whether or not such disclosure might be constitutionally required.

I. Evidence of Current School Sorting Practices and Their Disclosure

A. Field Survey Methodology

Originally, we had anticipated that there would be a wealth of writing about the ordinary school sorting process, perhaps along with discussions of the advantages and disadvantages of alternative approaches. To our surprise, we could find no literature on the features of the school sorting

4. See generally, L. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 10-7 to 10-19 at pp. 501-563 (1978) and at pp. 51-55 (1979 Supp.).

process that concerned us most: How do public schools and school districts assign students of all grade levels to schools, to teachers and to courses? What determines whether students are promoted to the next grade or retained? How are initial assignments changed, if they ever are? Our first considerable task, then, was to learn for ourselves something about how the mainstream sorting process works.⁵

Our field research was straightforward. We selected seven school districts in California to study, with varied sizes (student enrollments ranging between 2,000 and 50,000) that we hoped would give us a good sample of sorting and disclosure practices; five of the districts were located in the San Francisco Bay area, and two were in the Los Angeles area. Visits were then paid to sixteen elementary schools, seven junior high (or middle) schools, and eight high schools, as well as to districtwide administrative

5. Somewhat related literature that we have found helpful, some of which was published after we completed our fieldwork, includes:

(on curriculum structure generally)

- CALIFORNIA STATE DEP'T OF EDUC., *PATHS THROUGH HIGH SCHOOL* (1987)
 J. GOODLAD, *A PLACE CALLED SCHOOL* (1984)
 J. OAKES, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* (1985)
 E. BOYER, *HIGH SCHOOL* (1983)
 J. GOODLAD ET AL., *CURRICULUM INQUIRY: A STUDY OF CURRICULUM PRACTICE* (1979)
 J. GOODLAD, *FACING THE FUTURE: ISSUES IN EDUCATION AND SCHOOLING* (1976)

(on handicapped sorting)

- J. HANDLER, *THE CONDITIONS OF DISCRETION: AUTONOMY COMMUNITY, BUREAUCRACY* (1986)
 L. AND B. GRANGER, *THE MAGIC FEATHER* (1986)
 HANDLER, *CONTINUING RELATIONSHIPS AND THE ADMINISTRATIVE PROCESS: SOCIAL WELFARE, 1985 WISC. L. REV.* 687
 POTTER ET AL., *Eligibility and Classifications Decisions in Educational Settings: Issuing "Passports" in a State of Confusion*, 8 *CONTEMP. EDUCATIONAL PSYCHOLOGY* 146 (1983)
 Hyatt, *Litigating the Rights of Handicapped Children to an Appropriate Education*, 29 *U.C.L.A. L. REV.* 1 (1981)

(on minimum competency tests, promotion and retention)

- Overman, *Student Promotion and Retention*, 1986 *PHI DELTA KAPPAN* 609
 Riffel & Switzer, *Student Promotion And Retention: Towards A Model Policy*, *EDUCATION CANADA* 4 (Fall 1986)
 Walden & Gamble, *Student Promotions and Retention Legal Considerations*, 14 *J. LAW & EDUC.* 609 (1985)
 NOTE, *Testing the Tests: The Due Process Implications of Minimum Competency Testing*, 59 *N.Y.U. L. REV.* 577 (1984)
 McClung, *Competency Testing Programs: Legal and Educational Issues*, 47 *FORDHAM L. REV.* 651 (1979)

(general)

- Comment, *Educational Malpractice: Potentialities for Applying Procedural Due Process*, 14 *STETSON L. REV.* 103 (1984)
 J. Spring, *THE SORTING MACHINE: NATIONAL EDUCATIONAL POLICY SINCE 1945* (1976)
 Buss, *Implications of Goss v. Lopez and Wood v. Strickland for Professional Discretion and Liability in Schools*, 4 *J. LAW & EDUC.* 567 (1975)

headquarters. In all, more than 100 fairly lengthy, reasonably standardized, interviews were conducted with people from each school and district office who appeared to us to be appropriate reporters — teachers, principals, counselors, parents, students (at the high school level) and district administrators with relevant responsibilities. Districts, schools and individual reporters were promised confidentiality in the sense that we would not publicly identify the names of the schools or districts visited or the individuals who made comments. After a lengthy written report was prepared for each district, a copy was sent for comments to a key interviewee in that district, inviting him or her to discuss it with other appropriate school officials; occasionally this generated new information that permitted us to amplify our reports. Copies of the district reports and of a longer report summarizing the field work findings from all of the districts are on file with the authors.

Because we uncovered both different practices and recurrent practices, we are confident that we have captured a variety of the ways that the sorting process is carried out. We also believe that the field research has given us a reasonably good feel for disclosure practices. We next present descriptions of both the sorting process and disclosure practices with respect to that process.

B. Assigning Students to Teachers

1. Elementary Schools

In elementary schools that employ more than one teacher for each grade level, children who are already enrolled in the school and who are expected to continue are typically assigned in the late spring to their next year's teacher. Who does the sorting? We found considerable differences. At some schools the "sending" teachers decide; elsewhere the "receiving" teachers are also centrally involved in the decision-making. In yet other schools, teachers and the principal together decide — either through an all school staff meeting or through a series of meetings between the principal and the relevant teachers. In still other schools, principals make the assignments on their own. As for why a school's sorting process is carried out as it is, explanations included "tradition," who knows the child best, staff morale, administrative efficiency and fairness to both teachers and pupils. This suggests that the answer to "who" does the sorting is often tied to the "criteria" employed in the sorting process.

We found that two somewhat contradictory criteria dominate the process of assigning pupils to elementary school teachers. One is that, other things being equal, classroom populations should be "balanced" so as to be largely indistinguishable from one another. This generally means an

equal distribution of children by race, ethnicity, sex and ability, as well as allocating to each class its fair share of both the serious problem students and the positive role models. One way to try to achieve “balance” of those sorts is through what appears to be random assignment, and some principals indeed follow the practice of simply “dealing out” a deck of 3 x 5 cards containing the names of all the children in a particular grade level. This practice, of course, risks considerable imbalance owing to the luck of the cards. While a principal can readily overcome the risks of race and sex imbalance by dealing out mini-decks grouped according to those criteria, if a balance of leaders, troublemakers and students of varying ability is to be achieved, the principal almost will certainly have to bring teachers into the process, at the very least by relying on standardized evaluations that teachers make of their current students. One common practice we found that strongly emphasizes the “balance” norm starts with the principal first literally dealing out the deck(s) of cards, and then posting the preliminary results in the staff room. Teachers may then propose changes on the ground of imbalance, based upon their personal knowledge of the pupils. Under this approach an individual pupil ends up in a class based upon the luck of the draw, unless there is some affirmative reason to shift him or her. Consistent with the norm that all classes are to be essentially alike, some principals first create groups through the method just described and then randomly assign teachers to them.

Competing with the “balance” norm is the ideal of individual treatment. This rests on the notion that, all things considered, it is better for specific children to be placed with specific teachers. In practice this means matching certain children thought to have special needs with teachers who are thought to be specially able to serve those needs; it means taking a child’s friendships into account in various ways (e.g., continuing or dividing up closely knit social groups); it can mean taking certain teacher preferences into account; and it also creates the possibility of protecting, punishing or rewarding individual students or teachers through the sorting process (in ways that might be considered quite inappropriate or unfair — a matter to which we will return later). No one we interviewed said that any written list of criteria exists to guide this individualized process; rather, it is a matter of the exercise of professional judgment.

Of course, adjustments that are made to the randomly dealt deck also are based upon individual considerations. In their purer forms, however, the two differing perspectives we have identified imply quite different processes. Rather than looking for an affirmative reason to change an initial luck-based assignment, the individualized treatment approach envisions making a deliberate and reasoned classroom assignment for each child — typically subject in the end, however, to the requirement that the resulting groups are largely balanced by most of the usual criteria.

Additional factors enter to make real world processes rather messier than so far recounted. For example, where schools have "combination classrooms" (e.g., grades 1 and 2 together), then it appears that preference in assignment to those classes is frequently given to those judged to be "independent learners." Another complicating factor is the arrival in the fall of relatively unknown children who are new to the neighborhood, to say nothing of the unexpected disappearance over the summer of those who already had been placed, the transformation over the summer of troublemakers into angels, leaders into introverts, and so on.

Finally, parental requests, at least in some schools, are another critical factor in the sorting process. We found that schools vary widely in the number of requests they receive, involving up to 15 percent of the enrollment. Schools also varied widely in the extent to which they encourage such requests, and in their willingness to honor them. Where there are, for example, many available teachers for a given grade, schools quite often are willing to honor requests that present any fairly plausible reason for having the child *avoid* a specific teacher. But efforts to *obtain* a specific teacher are another thing.

Principals with few requests for specific teachers say they tend to honor virtually all of them. But some of those with many requests say they fear that honoring such requests would create undesirable "unbalanced" classrooms (both by ability and in terms of other demographic features). This is because parents of relatively high-achieving students are seen as over represented among those making requests, and they tend to want the same teacher for their children. Some schools deal with this situation by discouraging requests, or by having parents name two acceptable teachers, or by having parents describe what they want for their child without naming individual teachers. These strategies give principals more discretion. Yet, many principals realize that honoring the requests of vocal and articulate parents can create substantial advantages and that to deny those requests (either individually or through a blanket policy) can be quite costly.

In a nutshell, that is what we learned about the basic elementary school sorting process. What are parents told about this process? Nowhere did we find a formal policy of affirmatively informing parents, in writing or otherwise, about who makes the sorting decisions and the criteria they use. Rather, schools simply notify parents of the result, sometimes in the spring and sometimes not until the fall term begins.

This is not to say that schools would refuse to disclose their practices, although they are plainly not commonly called upon to do so. Nor does this deny that information about next year's assignment is sometimes discussed informally in parent-teacher conferences, and, as we will discuss

later, individual attention is given to the few parents who seek to have their child's teacher changed after the assignment has been made. Most parents, however, are not given an explanation of how and why their child got a particular teacher. The formal written material that is sent to parents typically contains other information. For example, many schools have an official school handbook that is given to all pupils or sent to all families. While it may contain information about testing, curriculum, discipline and other school rules, none that we saw discussed either teacher assignment criteria or procedures.

To be sure, in schools where parental requests are encouraged, it is clear that parental preference is important. Two of the seven districts we visited traditionally notify parents each year that class assignments will be taking place in the near future. Schools in these districts typically announce this in the regular school newsletter or bulletin. In such schools, as well as in schools that accept requests without encouraging them, the typical position is that these preferences are taken into account and that parents will be told of the final result. However, even where schools willingly entertain parental requests, no formal mechanisms exist for providing parents written information upon which to base such requests, e.g., the educational background, philosophy, teaching style, general popularity or special talents of the various teachers.

Information about teachers must be obtained informally — through word of mouth, through classroom visits, and the like. In such circumstances, parents who are well-connected to the school, through PTA participation and other volunteer activities, are in a better position to learn reliable information about individual teachers. Parents also can learn about other teachers from their child's current teacher at the routine semi-annual parent-teacher conferences. Yet no school we visited had formal policies about what is to be discussed at such conferences, and it is likely that individual teachers (and parents) use them in different ways.

We gave some attention to one special category of elementary school pupils — those who are retained at a grade level. In most of the schools we visited, this was a fairly rare event. Nonetheless each school failed to promote some pupils every year; in percentage terms, retention rates varied from about .5 percent to a high of 7 percent of the student population. Three-quarters of the repeaters were kindergartners and virtually all of the rest were first-graders.

The classroom teacher first selects a child for possible retention. Typically that proposal is reviewed by other professional staff, such as a school psychologist, a resource specialist and the principal. In some schools there are standard evaluation forms that must be completed for proposed retentions; although these forms serve to collect information about the child and his or her family, a professional judgment, rather than

some formula, is required to decide how to deal with every child. It is well recognized that sometimes retentions can be very helpful to a child who has been an educational failure or who is socially immature. On the other hand, retentions also can be very damaging to the child's psychological development and can set the stage for long-term educational failure, to say nothing of the risk that the retained child may become a serious behavioral problem and disrupt the education of others.

Although the preliminary decision about retention is a professional one, in every school we visited parents played a critical role. This is because the professional staff believe that unless the parents are supportive, the retention will be a failure. As a result, when parents oppose retention, their child is promoted. Schools seem to vary considerably in their willingness to try to persuade parents to support a proposed retention. Some schools, especially those where retentions are more common, have an established policy of informing parents by the fall grading period that retention is being considered; in all the schools it was rare for any retention to be proposed to parents after April. Some of the school handbooks mentioned above do spell out general retention policies and procedures. Nowhere did we find it clearly stated that if the parents oppose the retention, the child will be promoted, even though this is the clear practice of the schools. The extent that this is informally made clear to parents is unknown to us.

2. Junior High Schools

In the typical junior high school that we visited, pupils take five or six courses from as many different teachers. Ordinarily, students are randomly assigned (by a computer or the equivalent) to specific teachers under the direction of a school counselor. Thus, which of the many, say, social studies teachers they get, and at what time of day, is largely a matter of chance. Counselors give individual attention to a student's enrollment in one or two elective courses and to the determination of a student's appropriate level of math and English; note that this focus is on the course, not the teacher.

The junior high schools typically offer accelerated, regular and remedial classes in at least two subjects, math and English. Counselors appear to make math and English track placements using various test results, evaluations of prior teachers, parental requests, and the counselor's personal assessment of the pupil. No formal mechanisms exist for interweaving these criteria. In many cases assignment to a specific course level will determine the specific teacher a child has, and will sometimes also determine who one's classmates and teachers are, even in courses that are not directly grouped by ability.

We discovered no formal practices for informing parents about how

these assignments are made — either in general, or with respect to their own children. As with elementary schools, however, this does not mean that school officials refuse to talk about this part of the sorting process with those who ask. Moreover, junior high schools usually do have a practice of holding mass meetings with parents of incoming junior high school pupils sometime during the spring before the students start junior high. At such meetings (typically attended by about 50 percent of the invited families) information about the academic program is provided. One junior high school we visited attempts to arrange individual conferences between its counselors and every incoming junior high school pupil and his or her parents.

As for elective classes, the counselors try to satisfy a pupil's first choice. In our sample, students were typically given some limited information about the available electives. Students are then asked to obtain written parental approval for their elective(s). In some schools, however, this requirement is not well-enforced; from 10 to 45 percent of students, in the schools we visited, typically fail to return forms with parental signatures. Moreover, parents do not seem to be provided much information about the electives beyond the course names and perhaps the teachers' names.

Admission to oversubscribed elective courses is decided in a variety of ways by the different schools. Sometimes there is a principle of first-come first-served; other schools use a lottery; others allow teachers to choose; and at still other schools the counselor looks for openings in second-choice courses. Some students initially fail to make any election. They are sometimes simply assigned to available courses, or else tracked down and asked to make a choice from what is left. Whatever the school's practices, they are not formally disclosed.

A small proportion of pupils receives special handling. These tend to be children of the few parents who make specific teacher requests, students which individual teachers have sought to exclude from their class, and students whose bad behavior in the past cautions against relying on the normal procedures in making their assignments. These practices are not formally disclosed.

3. High Schools

High school students must be matched with courses and then, where appropriate, with specific teachers. With respect to courses, as a formal matter high school students typically have many electives — both as to the broad direction of their education and as to the specifics. The high school curriculum is designed, however, with certain paths in mind. For example, many courses are sequenced and have prerequisites; many are plainly designed for one educational objective (e.g., “college preparatory” or

“vocational”). Consequently, even though none of the schools we visited had a formal full-scale tracking system, students are, as a practical matter, grouped, mostly on the basis of academic ability.

Placement into ability-based math and English courses offered upon entry to high school depends importantly upon junior high school performance. More generally, discussions with high school counselors can play a key role in steering students into courses that the counselors think are more appropriate for them. High schools typically have a catalog of course descriptions and teacher names. Typically no other information about the teacher or about the past popularity or accomplishments of the course is provided. As in junior high, pupils are supposed to get parental approval of their proposed course list; as in junior high, a substantial number do not. Although parents may be given general information about course assignment patterns in a school handbook or at school “open houses,” detailed information about how students are grouped academically or selected for courses that are oversubscribed is not generally provided.

Assume, then, that a high school student has selected the courses he or she will take. How is the student’s actual schedule constructed? In most of the schools we visited, students self-select their teachers, the times of day of their courses, and, in many respects, their classmates, through a process often called “arena scheduling.” Teachers or their representatives sit in a large room holding enough class cards to fill their teaching schedule, and students go around and assemble the right number of cards to fill their program. Understandably, this is sometimes termed a “scramble” method. Despite the measure of choice extended to students by this system, putting together just the program the pupil wants can often require some rather savvy rushing around. For example, if one waits too long, other students may fill up a class that is key to the way a student has planned his or her schedule; or, if too much time is spent standing in a long line trying to get a class card from a single popular teacher, then the opportunity to enroll in other desired classes may be lost. This process naturally causes some students to end up registering for different elective courses than their original choices.

To mention a few more details, the older students are frequently the first admitted into the arena. Inevitably, some students do not participate in this process. In some places they are assigned to what is left, whereas in others at least some unmotivated students are identified at the outset and hand-scheduled by counselors before any other students start. Plainly the idea here is to avoid having “needy” students always wind up with the least popular teachers and perhaps all grouped together. We also had reports that some teachers refuse to give cards to pupils they do not want in their courses, suggesting that “arena scheduling” is not a completely

one-way choice system. Although students no doubt learn various things about the arena scheduling system through experience with it, we found no examples of information provided to parents that might serve to help them prepare their children for effective participation in the process.

For reasons of efficiency or because of perceived disadvantages of the arena scheduling method, some high schools assign teachers and times of courses by computer. In such schools it is sometimes thought, for example, that students would make immature decisions if left to their own, and that certain teachers would be undesirably, and perhaps unfairly, singled out as the weaker ones.

C. Changing Teachers after the School Year Begins

Schools at all levels deal informally with the rare requests they get from parents to have a child's teacher changed after the school term begins. Although parents are generally told that they should contact the school if they have any sort of problem, they are not formally told that one thing they might want to request is a teacher change. Moreover, no school we visited had a written procedure or written criteria for handling such requests as they were received.

Once requests are made, parents are often first referred back to the teacher to see if the problem can be resolved. Ultimately, we were told, principals make individualized decisions based upon their exercise of professional judgment; presumably influenced by their experience, principals simply develop their own ways of making these decisions. It appeared to us that principals have quite differing attitudes about such requests; some normally will try to grant them if space reasonably permits, while others require quite a bit of persuading. Even in the latter situation, however, it seemed clear that if parents were adamant enough, a change almost surely would be granted on the ground that otherwise the child's learning, and perhaps the entire classroom, was likely to fare poorly for the entire term or year. Parents are not told, however, that showing such determination almost always assures a transfer.

At the secondary school level, students are usually told about how they may change courses (and teachers) during the first few days (or weeks) of a term. The possibility of changing teachers well along into the term is rarely announced; rather, students are told in a general way that they should see their counselor if they are having problems. Nonetheless, in the secondary schools we visited, informal networks are quite active, and students are often aware of the attitudes of individual counselors towards program changes. One consequence is that some students learn to couch their requests in terms that do not reflect their real reasons, but which are calculated to manipulate a given counselor. A student might, for example,

assert that the work is too difficult, when the real objective is to get into a different class with certain friends.

During the term, transfers are sometimes initiated by school officials. For example, a teacher can request that a pupil be placed in another class on grounds of severe personal conflict or inappropriate academic placement (in junior high and high school). Internal (apparently unwritten) school policy determines which of such requests are granted. Other times (especially in junior high and high school) changes are initiated by counselors or other administrators because of a belief that one or more placement(s) is not working out.

Students are, of course, notified once such changes are arranged. We did not uncover, however, any formal mechanisms for alerting parents that such requests were being processed or what criteria were being applied. Indeed, in junior high and high school, parents might well not be notified formally that any such change has been made. Nor did the handbooks, mentioned earlier, contain information about policies and procedures concerning changing teachers.

D. School Assignment and Transfer

Our discussion so far has looked at sorting practices inside schools; here we look briefly at the practices of sorting students into different schools. With respect to initial school assignment, all the districts we visited create a number of attendance areas and assign children living in each area to the designated school site for their appropriate grade level.

Many criteria are employed in drawing the attendance area boundaries. Assigning children to their closest school, subject to special geographical conditions and traffic dangers, is the dominant norm. Sometimes enrollment capacities, combined with the mismatch of population growth and school location, means that many children will not be able to attend the school nearest home. Moreover, some districts we visited deliberately drew attendance areas so as to promote racial balance even if it meant assignments to somewhat more distant schools; none of the districts we visited was under court-ordered desegregation, and none engaged in what could be called a "school busing" program.

There are many informal channels, including school officials, by which families moving into a community can learn to which schools their children are likely to be assigned. But in no district did we find any written information that is available to the public that spells out exactly how the specific attendance areas were drawn. Eventually all children are formally enrolled and school district records are maintained showing each child's address.

Some pupils attend district schools outside their attendance area — con-

siderably fewer than 5 percent in most districts we visited, and from 5 to 10 percent in the rest. Some districts willingly accommodate all requests for intradistrict transfers, as long as space is available in the requested school. In such districts the parents' reasons for preferring another school is irrelevant. One district with this policy operates a formal open enrollment scheme and, where there is demand for any particular school beyond space available, selects among applicants by lottery. Another district has been able to honor all transfer requests. In the former district, a substantial disclosure policy exists. Not only are families told generally about open enrollment opportunities, both through letters and announcements in community news media, but disclosure also is made about both the district's selection procedures and the special features of the schools of choice. This is accomplished by having each school prepare a little booklet about itself and by offering bus tours that take families around to the various schools.

The majority of districts we visited are far less willing to permit intradistrict transfers. They tend to view transfers as ways to meet special student needs, and district policy is to review carefully each application to see whether the request is based upon what is considered a legitimate reason. In those districts transfer requests are denied, even if there is space available, if school officials do not accept the reason for the request. For example, the family's plans to move into an attendance area, child care needs for elementary school pupils, and special medical needs of the child are considered legitimate needs; whereas, requests based upon the desired school's athletic programs, its lack of racial balance, or its reputation for quality are generally rejected. Requests made for special circumstances that do not fit established patterns are handled on an ad hoc basis. Generally speaking, districts do not have outreach disclosure practices that inform parents about the availability of criteria governing intradistrict transfers. Some districts, however, do have printed documents discussing this matter and provide them to parents upon request. Also, many districts do notify parents that transfers are possible, inviting those who may be interested to ask for further information. But districts do not typically provide written information setting out which reasons for transfers will be accepted and which will not. In defense of such practices, some administrators said they feared disclosure would encourage people to make up reasons in order to hide their true reason.

In some districts, requesting parents must convince the principals of both the sending and receiving schools; elsewhere, a central district committee makes the decision. The latter arrangement coincided with the two districts that most often turned down transfer requests; we were told that the committee can be tougher than can a local principal who would other-

wise be left with a disgruntled family that he or she had personally refused to accommodate.

Appeals from denied transfer requests are typically permitted. Some districts have formal procedures, including appeals to the board of education; others have informal appeal arrangements. Many interviewees spontaneously reported to us that some families evade the intradistrict transfer process by giving a false address. We did not attempt to study this behavior in depth.

Interdistrict transfers, in the districts we studied, typically follow the basic pattern just described for intradistrict transfers. Usually, independent approval must be obtained from both the sending and receiving districts. Individualized determinations are made and one has to have an acceptable reason to have a transfer approved. Acceptable reasons vary, however, both from district to district and as between intradistrict and interdistrict transfers. For example, a district that might be willing to allow a transfer from one of its schools to another for what was seen as good educational reasons, might be quite unwilling to allow a pupil to leave the district for that reason — since the loss of the student from the district entirely means a loss of funds and a risk to the district's reputation. These transfer requests are typically determined at the districtwide level; individual appeals to the board are sometimes permitted.

E. Conclusion

Our field research has convinced us that public schools do not have substantial and systematic outreach programs designed to inform families (or community leaders) about school sorting practices in the district. This does not mean that such practices are carefully guarded secrets or that a formal disclosure system would be a good thing. New disclosure policies could take many forms: one can describe information about general policies, the rationales for them, child-specific classifications, and/or the evidence to support them. Furthermore, one can have outreach disclosure, affirmative efforts to inform all families, or elective disclosure, which makes information available only to those who request it. Some of these options might be desirable while others might not; and the answer may differ for different parts of the sorting process. In order to begin to resolve such issues, the remainder of this article provides a general framework for analysis.

II. Potential Benefits and Costs of Disclosure in General

The last section documents, at least for the schools that we surveyed, the paucity of information formally provided to (or by) parents and

children about school sorting decisions. This does not necessarily mean that additional information would be more valuable than the costs of providing it. Indeed, the meager information already made available may carry costs beyond its benefits. In this section, we analyze both the potential benefits and the potential costs of information disclosure. That is, which social interests might be furthered by information disclosure (the benefits), and which might be hindered (the costs)?

We do not suggest that there is a simple method for comparing these benefits and costs, because we recognize that individuals may place different values on any given cost or benefit. Nevertheless, this articulation of the different interests involved does provide a useful framework for debating the merits of specific disclosure requirements. In the next issue of the *Journal*, Part II of this article will take this idea further and illustrate it with analysis of some specific alternatives.

Our initial discussion of benefits in this part starts by considering the "private good" aspects of educational sorting decisions and examining what is best for each child as an individual. We will then focus on the public aspects of these sorting decisions and the responsibilities of institutions of democratic government in this area. After broadly presenting these ideas, we will then specify in more detail how potential benefits are linked to disclosure. The subsequent discussion of the cost side is more straightforward. We address the costs of producing and providing additional information, the costs of processing it as part of decisionmaking, and what we call demoralization costs that may arise as a consequence of trying to inject more information into the decision process.

A. Benefit Concepts

1. Education as a Private Good and Models of Informed Choice

Because of the complex nature of education, it is difficult to make informed sorting choices even when one considers education only as a private good intended to benefit the individual child. To best match a child with a particular educational opportunity requires knowledge of both the child and the available alternatives. Moreover, it is unlikely that any single party initially will have all the relevant information in hand. Educators probably will know more (but not everything) about alternative educational programs, while parents (particularly of primary school children) probably will know more (but not everything) about their own children.

Of course, the same division of knowledge may be said to apply to demanders and suppliers of virtually any good or service. Consider consumers, grocers and the selection of groceries as one example. The grocer uses his or her knowledge to select from producers and wholesalers a

broad array of groceries to offer to customers; and, over time, customers learn through trial and error, and from other sources of information, to select the groceries that best suit them. In this case, it is relatively easy for the grocer to "lay out" the alternatives for the consumer and let the consumer make the choice. It would be much more cumbersome for the consumer to explain his or her preferences to the grocer and let the grocer make the selection for the shopper.

On the other hand, for a service such as medical care the importance of expert diagnosis and sophisticated knowledge of appropriate treatment requires that doctors do the bulk of the decision-making. Furthermore, consumer preferences traditionally have been thought to be largely transparent to the doctor (although the absoluteness of this assumption has been successfully challenged by the "patients' rights" movement). It often would be very expensive to make patients informed enough to choose sensibly from a broad array of alternatives. Trial and error learning would involve frequent and costly mistakes, and sometimes the only other way to put patients on a par with physicians would be to give them a time-consuming and expensive medical education. Thus, the doctor, rather than the patient-consumer, usually does most of the decision-making (e.g., restricting patient choice to only one or two options).

To be sure, the last decade has seen an explosion of interest in the idea of informed patient consent. But even where this idea is embraced, it primarily involves the disclosure of significant risks of treatment and the presentation of sharply differentiated medical alternatives. Making the diagnosis, recommending the "best" treatment and deciding how to carry out the treatment are still very much in the doctor's hands.

One important concern in the medical care example, or in any situation in which it is arguably desirable because of a disparity in knowledge to have the supplier do the bulk of the decision-making, is whether the supplier has the incentive to act in the consumer's best interests. A doctor who knows the most about what treatment is appropriate also will know what treatment is the most profitable and the two may not be the same. How, therefore, do we get the doctor to sacrifice his or her own selfish interests in order to give the unsophisticated patient a more appropriate treatment? Although we can count on the personal morality of many doctors to put patients' interests first, nonetheless, some social control mechanisms are usually thought necessary to encourage the resolution of these conflicts in the patients' favor. Examples of such mechanisms are competition from other doctors (e.g., through the initial choice of doctor and through second opinions), malpractice laws, peer review within hospitals of proposed operations, and education in medical ethics (e.g., the Hippocratic Oath). Most relevant for our purposes, laws requiring information disclosure to patients also can be understood to serve this social control function; that

is, once the decision-process is opened up to patient scrutiny the doctor may be more inclined to be sure the patient's interests are placed first. The general point is that how well the "supplier decision-making" method works depends both on the supplier's knowledge and on the incentives guiding the use of that knowledge.

We raise these grocery and medical models in order to contrast two different approaches which could be used to achieve informed educational sorting decisions. On the one hand, parents and older children can make choices, perhaps with helpful guidance from professional educators. On the other hand, the professional educators can make the choices, perhaps with guidance from parents and older children. To us, it is not obvious which approach is better, and this question cannot be answered without considering what knowledge is appropriate, who has it and what incentive structures can guide its use in decision-making. It is clear, however, based on our field survey of educational choice-making, that most existing practices in public schools are much closer to the traditional medical model than to the grocery model. Even many of the parent-initiated educational changes that are obtained for their children are more analogous to patient visits to doctors with complaints about symptoms or requests for certain treatments than to shifts in patronage to a new kind of soap, cut of meat or brand of applesauce. Still, the educational picture is a mixed one since, at least for some decisions, public schools now do function more in the consumer choice (grocery store) model.

In either case, because the existing status quo system of largely professional decision-making currently offers little encouragement of parental input, it makes sense for those examining possible changes to focus primarily on increases in information disclosures to and by parents which might encourage their greater involvement in the decision process. Disclosures to parents might include teacher appraisals of their child's needs, information about sorting alternatives, and information about who makes the sorting decisions and on what criteria; disclosures from parents might include their appraisals of how their child is taking to different aspects of school and the parents' aspirations for the child's immediate and longer-run educational future.

Note well how this increased involvement of parents might lead to more informed choices either directly, because whoever decides (teachers or parents) now knows more about what is suitable for the child, or indirectly, because professional educators, to the extent they make the sorting decisions, have strengthened incentives to decide in ways that better serve the interests of education consumers. Concerning such incentives, it is worth recalling that in the medical model, one mechanism for providing appropriate incentives to suppliers was competition from other doctors.

Public schools, however, are largely protected from competition,⁶ and must, therefore, rely more on other mechanisms to ensure responsiveness to their consumers. In short, the structural nature of public education ought to heighten our interest in information disclosure requirements as a social control mechanism to achieve informed choice.

2. Beyond the Interests of the Individual Child and Models of the Citizen's Right to Know

The above discussion takes as a premise that education is largely a private good that benefits only the individual child. Of course, education is not simply a private good. It also affects families, other children, local communities and society at large. In technical economic terms, it is characterized by important elements of "externalities" and "publicness" which both make the informational aspects of school sorting more complex and justify additional governmental roles in the sorting process. While this is not the place for a lengthy discussion of these elements, we review them here briefly.

First, it is widely believed that the education any specific child receives is very much a function of the characteristics of his or her classmates. And class composition can be homogeneous or diverse with respect to many educationally relevant attributes: e.g., gender, ethnicity, socioeconomic status of the child's family, existing friendships among classmates and prior or predicted educational performance (measured by standardized test scores or previous grades). Children can be deliberately placed to be with their friends or to avoid them, and disruptive students can be placed in one class or spread evenly among the classes. Obviously, any choice that helps one child also might help or hurt others. This interdependence radically complicates the sorting process.

Those designing the sorting mechanism must contend with efficiency objectives; from that perspective, one would concentrate on assignment practices that take maximum advantage of positive (i.e., beneficial) externalities, while minimizing negative ones. At the same time, one must be alert to distributional issues. Who bears the burdens of, and who benefits from those externalities? From the overall social perspective, maximum efficiency might call for distributing benefits and burdens in an unacceptable way. If so, some tradeoff is required. In any event, the point is that the conflicting interests of children adds an overlay to the school sorting

6. Private schools offer only limited competition because of the additional expenses required to utilize them. Open enrollment within a district is rare and may not offer much choice anyway, if the district does not allow discretion in educational offerings to its individual schools. Moving to a new district involves considerable monetary expenses as well as family disruption costs.

process that is largely absent in the process that matches people to their toothpaste.

Second, a sorting decision may have important external effects on the family of the child in question. In part this is simply because families care about their children: e.g., if the child is unhappy at school, it makes the parents unhappy. But families (including siblings) are also independently affected by some sorting decisions in terms of convenience aspects such as transporting the child to school or arranging after-school care. Thus, the design of the school sorting process must determine the extent to which these interests are to count.

Third, public schools are, as the name implies, public institutions that are expected to respond to community concerns beyond those of the children and their immediate families. After all, the larger community pays for public schools through taxes, and a central justification for free public education is that it serves the community's interest in promoting an informed citizenry and a well-trained and productive workforce.

The upshot of these three points is that public schools are necessarily interested in more than achieving informed choice for the individual child. This complexity of goals heightens the rationale for a public decision-making process utilizing the professional expertise of educators. At the same time, if a government institution is given authority to make decisions affecting its citizens, then citizens must have mechanisms for controlling the exercise of authority. It is this democratic function which necessitates the citizen's right-to-know. This causes us to consider how information disclosure might improve institutional performance through the control roles played by citizens.

Let us illustrate this point more concretely. It should be clear that decisions about class composition, school attendance areas, transfer policies, general curriculum offerings and so on, cannot be decided by experts purely on technical grounds. That is, even if professional educators have the best technical knowledge of these choices and are well-motivated, these decisions also require value choices that most would agree require democratic review and assent. Put differently, it is widely appreciated that mechanisms of public control of officials are required.

One control mechanism, of course, is the election of responsible school officials, or of those who appoint such officials. And perhaps that is sufficient. But in order for the public to see how officials govern and to observe how nonelected school administrators and teachers function, the public may additionally want policies and routine practices to be open to public view. Here, there are several potential roles for disclosure.

For example, ability-grouping might satisfy one public value, better standardized test scores, while at the same time thwarting progress toward another public goal, maximum ethnic diversity in the classroom. To decide

whether schools should group children by ability thus requires a political decision. If the power to decide is delegated to the school level, its connection to electoral politics is considerably attenuated. However, the legitimacy of whatever decision is made there is likely to be enhanced, we suggest, if it is nonetheless perceived to reflect the consent of the governed. As we will shortly explain, disclosure might serve to help achieve that consent. This idea focuses on sorting decisions at the macro, or, policy level.

Even if community acceptance of a certain policy is obtained, that does not exhaust the community's concern. At the micro level, the public wants to be assured that individual decisions are actually made in ways consistent with agreed upon public policies; for example, if ability-grouping is supposed to be the policy, how can the public be confident that this policy is being followed by school officials in making assignments? The objective here is to control official abuses, and, as we will explain, disclosure may play a key role in achieving that goal.

Finally, suppose it is decided to sort by ability-grouping, but that parents have the right to express their preference for an appropriate group for their child, or even to veto the school's proposed assignment. Then, it would be part of public policy that parents do participate in this way. But the mere existence of rights does not assure their active exercise, what we term the entitlement exercise. Perhaps disclosure has a role to play here, too. In short, a policy promoting the citizen's right to know may have several social benefits.

B. Further Specification of the Linkage Between Disclosure and Benefits

In the prior section we identified four types of benefits that might be fostered through information disclosure about educational sorting decisions: informed choice, consent of the governed, control of official abuse and exercise of entitlements. Here we describe more precisely how information disclosure can foster these benefits either by encouraging parental and community contributions to decision-making or by strengthening the accountability of professional educators to parents and the public for the decisions they make.

1. Informed Choice and Disclosure

Because the existing incentives for public school officials to exchange relevant information with families regarding school sorting are weak, and because the private market for supplying information to families does not work adequately, increased formal information disclosure about school sorting could lead to more informed choices. We discuss these reasons in turn.

We already have mentioned that local public schools have near-monopoly control over their markets. Most school-age children have little choice but to attend the local public schools. School officials thus have a fairly captive market. By contrast, most private schools (as do most private firms) fear that their consumers will exit to a competitor and so strive to please them. Public officials, who face a greatly reduced fear of exit, have less incentive to spend their scarce resources on "public relations." After all, they see efforts to inform and solicit parental information as leaving less money available for classrooms, in return for only uncertain prospects of improving the fit between students and their classrooms.

Of course, this tendency to under-provide information already may have been compensated for through the normal political system. However, we think that this is unlikely for two reasons. One is that little attention has been focused on sorting problems from the consumer perspective, and we think that even a well-working political process has much to learn about the relevant benefits and costs of disclosure. It is unlikely that all good disclosure opportunities are already in place, because many of them have not yet been identified.

Second, because the benefits and costs from disclosure policies are borne by different interest groups, coalitions often arise in the political process which can block reform even when benefits outweigh costs. For example, well-organized teachers in a school district may prefer higher salaries to expenditures on disclosure, even if the unorganized and dispersed parents would benefit more from the disclosed information. The political problems can be compounded if a few organized and knowledgeable parents can "work the system" to achieve their own sorting choices and view disclosure as something which intensifies competition for desirable sorting options, thereby making it more difficult for them to have the options they want. Whether these blocking conditions imply an aggressive judicial role in the sorting process is something which will be considered in Part II.

If the information which could be disclosed is so valuable to parents and children, why doesn't the private market provide it? That is, why is the information not published and sold for a profit? There are two reasons: the difficulty of ensuring that the entrepreneur is paid by those who receive the information and the difficulty of obtaining the information from the schools.

In California, Lillian Svec Clancy actually tried going into the business of selling books that provided detailed school-by-school data for all public schools in particular California counties. For businesses seeking to locate homes for new employees in "good school" neighborhoods, for people thinking of moving, and for those families contemplating asking for an in-

tradistrict or interdistrict transfer, such books can provide useful data. They also can be instructive for those who want to see how their own local public school compares with others. But because of the ease with which information can be transmitted without paying royalties (by word of mouth, photocopying and news accounts), it remains to be seen whether this approach can work as a viable commercial venture. Clancy, at least, failed to make an ongoing business out of the sale of such books.⁷

To avoid this problem, one entrepreneurial strategy is to offer school counseling services for a fee. The private counselors can adopt an individualized approach in which they assess the child as well as the schools. However, for those families who feel they know enough about their child and only want the information about the schools, this approach is too costly.

In any event, as Lillian Svec Clancy discovered, if one is to do a guide to many schools, it would be extremely efficient if one could gather data from school officials. It is difficult for the entrepreneur to attend the schools and sample their offerings like a restaurant critic, and interviewing current users is quite expensive. But for that to happen, the schools have to be willing to disclose information to private disseminators. If Clancy's experience is any indication, even the most polite requests are often rebuffed with inattention, suspicion, active opposition, and claims (perhaps quite valid) of overwork.⁸ In short, private disclosure is not likely to be very successful if public schools resist organized private inquiries.

Another possible problem with the private approach to providing information is a distributional one. That is, perhaps those who are now the least-informed or who are poor will be unlikely to know about or be able to buy the private information. Thus public disclosure might be best thought of as a supplement to private information disclosure. For all of the above reasons, we think there is potential for achieving more informed choice through a government role in information disclosure concerning school sorting.

2. Consent of the Governed and Sorting Disclosure

Another type of benefit possible from information disclosure about sorting involves increased consent of the governed. The problem from this perspective is not the failure to apply a rule, but rather objections to a particular sorting rule.

7. Her product was L. CLANCY, *CONTRA COSTA COUNTY SCHOOLS: HOW ARE THEY DOING?* (1981). Following this one-time effort at providing detailed information about schools in one county, Clancy adopted a different strategy. She now produces volumes covering a much wider area (7 for all of California) that primarily disclose school by school test scores that Clancy obtains from the state. See e.g., L. CLANCY, *BAY AREA COUNTIES PUBLIC SCHOOLS: HOW ARE THEY DOING? VOLUME 5* (1988) and L. CLANCY, *THE TOP 100: HOW ARE THEY DOING?* (1988).

8. Interview with Lillian Svec Clancy (November 18, 1987).

The objections may be on either procedural or substantive grounds. That is, someone may object to a policy of hand-programming junior high schedules for "difficult" children because the policy was quietly adopted and not made known to those subjected to it; this is an objection to process. That this objection can be defused through disclosure is readily apparent. However others might oppose the policy even if it were openly enacted by the school board; this is an objection to substance. Here the potential usefulness of disclosure is indirect: initial disclosure may change the decision actually made; or subsequent evaluation of the policy and disclosure of the results may either win over objectors or cause the policy to be reversed.

Potential benefits from increased consent of the governed can apply to virtually all school sorting rules. The governed may object to a rule either because it allows for or bars exceptions. Objections may be made either to specifics included in the rule (e.g., "It is wrong to have advanced math classes") or to specifics absent from the rule (e.g., "It is unfair to allow school transfers for child care needs but not for bus route convenience," or "It is unfair not to allow teacher requests in junior high"). The point is that if policy is the product of unchecked bureaucratic decision-making, it undermines the consent of the governed.

3. Sorting Disclosure and the Control of Official Abuse

The traditional kind of abuse that can occur in the sorting process is the failure to apply rules evenly. One example of individual arbitrariness would be a counselor who singled out a favorite student for placement with a favored teacher when all placements were supposed to be random. This is an example of conscious and deliberate discrimination. Another example would be administrative errors without conscious intent to violate the rules. Sorting abuses also may be in the form of group discrimination, such as boys or (somewhat more likely) athletes or honors students being given first choice of electives in violation of the rules.

Information can help check and uncover such abuses. Sometimes the abuses are easy to detect, as when assignments are supposed to be random but all black children end up in the same class. In other instances, only access to school data can reveal abuses, for instance where access to advanced English classes is supposedly determined by test scores or if access to electives is on a first-come, first-served basis, but other students are given places in the class.

The above examples involve the application of rules that are clear and intended to be routine. However, the application of many rules calls for individualized judgment, and deviations from the rules are thus more difficult to detect. For example, suppose an assignment rule in matching students to third-grade teachers is to spread evenly the "leaders" and the

“troublemakers.” How is one to know student X has been mislabeled a “leader” or “troublemaker” in order to justify a certain assignment (an assignment actually made out of favoritism or nastiness)? As another example, suppose intradistrict transfers are to be approved when “child care needs are compelling” and a family’s request is denied. How is one to know if the decision to deny a given family’s request is due merely to the decider’s personal dislike of the child? In both of these examples, detecting abuse would first require knowledge of the criteria used in other cases for determining that students are either “leaders” or “troublemakers,” or that child care needs are “compelling.” Perhaps not only the publication of such criteria, but also a regime of parental rights to individualized explanations of how children are so identified would be necessary. In sum, while disclosure may both deter and provide proof of abuse, different abuses will require different sorts of information to combat.

It is clear from the above examples that, in general, the opportunities for abuse are greater when the exercise of individualized discretion is allowed. Some timid school leaders will prefer simple rules without such discretion in order to have a ready and consistent explanation for their sorting decisions. But other school officials will prefer rules that give them substantial discretion because they believe that individualized student treatment is educationally wise. Indeed, such officials might even make exceptions to clear rules without official authority to do so on the grounds that the exceptions represent sound professional judgments. The point is that one should not automatically reject discretionary rules in favor of simple ones purely to control abuse: the possibility of a trade-off between more informed choice and less official abuse should be considered. There may be real benefits from allowing the exercise of professional judgment.

Although it would be interesting and relevant to know how much abuse there really is, our field work was not intended to measure the incidence of sorting abuses. Nonetheless, here and there interviewees volunteered comments indicating that abuses do exist. We repeat some of these here, as examples of abuses to which the sorting process is subject.

One sensitive area often commented on has to do with the assignment of elementary school teachers. We were told of instances in which, contrary to policy, one teacher was loaded up with a disproportionate share of troublemakers while another was given an unfair share of the best students. We also were told of administrators who grant transfer requests as favors to their personal friends. We heard of high school teachers blocking student access to their class (by falsely claiming it is full) in violation of the rules. We learned about school officials who knowingly looked the other way in some false-address cases in violation of district policy. We have heard of central office secretaries giving wrong or incomplete information about elementary school attendance areas and of counselors foul-

ing up records so that students were assigned to the wrong classes. These latter two examples were probably in the "administrative error" category of abuse.

4. Disclosure and the Exercise of Entitlements

An entitlement exists when parents or children have the right to something in the educational system: e.g., to choose a course, or simply to have a preference considered. At the simplest level, "exercise" refers to the very first step in the sorting process — whether the child is attending school at all. That is, attending public school is an entitlement of all school-age children, and most people would consider increased exercise of that entitlement to be a good thing, or a benefit. Of course, information disclosure about the existence of this entitlement is not very interesting to discuss: its exercise (or finding an acceptable private substitute) is compulsory up to a certain age, and one would be hard pressed to find large numbers of American families that are unaware of it.⁹

Nevertheless, suppose we press this issue a bit further in light of the large numbers of high school dropouts (both formal and de facto through truancy). While all dropouts are presumably aware of their entitlement to attend their local high school, they may not be aware of other options. How many dropouts are aware of their entitlement to attend, say, a county-run regional occupational center which concentrates on teaching specific vocational skills? Once entitlement exercise is viewed in terms of specific options rather than schooling generally, it is readily appreciated that it applies to children in school as well. After all, the regional occupational center is as available to those still in school as it is to those who have dropped out.¹⁰ Since our research suggests that schools provide little formal information about choice of schools, the potential for disclosure to promote the exercise of entitlements is clear.

A different type of option, the exercise of which can be considered as a benefit, is the option for a parent or child to make themselves heard in the routine sorting process. The entitlement here is to have one's views reasonably considered, rather than an entitlement to make the decision. Our field survey has revealed numerous points where family input is variously required, accepted or at least tolerated. These points include intradistrict and interdistrict school transfer options, grade-level placement, course options, teacher choices and mid-year corrections to the initial

9. This could, however, be an important issue concerning the children of illegal aliens.

10. Of course, the application of the take-up concept to specific options raises this issue: how do we distinguish the take-up goal from that of more informed choice? We make the somewhat artificial distinction that information disclosure to foster take-up concerns the existence of options, while more detailed information about the options serves to inform choice.

decisions for all of the above sorting choices. But our survey also showed that there is considerable room for expanding the use of family participation though increased formal disclosure.

If increased disclosure does lead to increased exercise of family entitlements, two related consequences might follow. One could be more informed choice. The other might be a better sense of family satisfaction with the schools arising from participation in the sorting process.

C. Costs

In the previous section, we looked on the bright side of the consequences from increased disclosure about school sorting practices: the social benefits that might result. However, there is a dark side as well. Increased disclosure requirements have costs, which must be weighed against the expected benefits to determine if the disclosure requirement is worthwhile. Moreover, if those who bear the costs wish to and are able to resist, this can undermine the expected benefits. For example, suppose a disclosure requirement would impose certain costs on the school officials responsible for its implementation but no new budget allocation is made to cover those costs. As a means of avoiding these costs, the officials might engage in implementation strategies which frustrate the intent of the disclosure requirement. This should be taken into account in an analysis of benefits and costs.

Basically, information disclosure requirements involve three types of costs: producing the information, communicating or disseminating it and processing it. The latter cost does not actually arise from the disclosure itself but is necessary for the use of the disclosed information. Note that the production-to-use cycle may go either from schools to the community or vice versa. For example, the schools may have to produce and disseminate information about each child's placement, and its use depends on whether and how parents process it. Alternatively, parents may be requested to disclose a placement preference for their child (perhaps with a reason), and its effect depends on whether and how the school system uses it. Note also that the costs of communicating and processing may occur simultaneously, e.g., a teacher meets with a parent to explain why the school recommends grade retention for the parent's child and seeks parental approval.

The most straightforward of the costs of disclosure are the resource costs of producing and communicating new information: the labor costs, printing and materials, etc. Yet a simple assessment of these can fail to identify some of the true social costs that may arise and their importance to the success or failure of disclosure requirements.

For example, suppose it is estimated that 100 hours of school employee

time are required to produce a mailing of certain information to parents. If taxpayers provide additional resources to hire someone to do this, then the salary is an appropriate measure of labor cost. But suppose taxpayers do not provide additional resources, and school counselors have this responsibility added to their jobs. Then they must do less of something else. The true social costs depend on the value of what has been lost (what economists term "opportunity costs"). These costs can include the value of the lost services to the children and their parents, as well as any change in the job satisfaction of the counselor.

We believe that understanding the costs school employees are asked to bear is particularly important for predicting their response to, and thus the actual achievements of, disclosure requirements. How are existing school staff likely to feel about disclosure in the school sorting context? Some may prefer to expose their work, hoping and/or expecting that praise and recognition of their value will follow. For others, however, the fear of criticism may dominate. School administrators, counselors and teachers are accustomed to having the sorting process function rather quietly and might well find increased parental involvement an unwelcome intrusion. Such feelings could impose demoralization costs if disclosure worked as intended, and the attempt of school employees to avoid them could make effective implementation of the reform difficult.

We already have mentioned, in our discussion of control of official abuse, another "cost." Fear of having to justify discretionary decisions through disclosure requirements may cause school officials to sacrifice the use of their professional judgments in order to have rules that are easier to justify. If their professional judgments were, on balance, good ones, then the result may be less informed choice.

Information processing costs have much to do with the way people use information made available to them. Recall our introductory example of medical care, and the relative ease with which a trained physician (as opposed to the patient) can decide what treatments are appropriate for given symptoms. It is not surprising that consumers, who have many competing uses for their scarce time, will sometimes rely on the judgments of trusted or experienced friends or professionals rather than spending time researching an issue for themselves.

Consider the many parents who now accept school decisions concerning their child's classroom placement in elementary school. How will they be affected by a notice of the opportunity to express a preference for a particular teacher (an opportunity which we assume existed before information disclosure about it was required)? Only those who are willing to make some effort to find out something about the available teachers are likely to take advantage of this opportunity (some parents may even put down a name based on no useful knowledge). But because of the competing

demands on their time and their belief in the reasonableness of the school's placement process, many parents will not make efforts to inform themselves. In other words, many parents will not expect the gains to exceed the information processing costs of making the effort. The disclosure's effectiveness depends, therefore, on the extent to which the notice will induce additional parents to conclude that it is worth their effort to inform themselves about the available teachers and to make an informed expression of preference.

Finally, although many children might benefit, possibly in several ways, from a regime that provides to their parents any candid school performance evaluations that play a part in sorting decisions, some might not. For example, in certain cases negative reports could cause trauma at home or stigma at school that might have been avoided through the discreet exercise of professional judgment by school officials. In short, the very involvement of families that at first appears beneficial may in fact have heavy costs.

D. Lessons from Other Consumer and Governmental Disclosure Laws

There is considerable evidence from the literature on information disclosure in other policy settings, that those expected to bear the costs of disclosure will seek, if possible, to avoid them, and that this response can lead to reduced or negligible benefits from the disclosure requirements. It is instructive to review this literature briefly, as a means of sharpening our ideas about the nature of costs and their effects on cost-bearers in the education setting. We first review studies of consumer disclosure in the private market, and then efforts to analyze the effects of disclosure by government institutions.

The findings of studies of consumer disclosure laws in private market settings are mixed. Many have found that information disclosure enhances the confidence consumers have in the products they buy, but that market behavior by consumers does not change.¹¹ For example, Whitford found that the disclosure of effective interest rates by lending institutions as required by truth-in-lending laws has no effect on the behavior of borrowers.¹² Day and Brandt similarly found that borrowers were not more disposed to engage in comparative shopping for credit terms subsequent to adoption of the truth-in-lending laws.¹³ In their study, only 10 percent of

11. For an overview of the research performed, see Day, *Assessing the Effects of Information Disclosure Requirements*, 40 J. OF MARKETING 42 (April, 1976).

12. W.C. Whitford, *The Functions of Disclosure Regulation in Consumer Transactions*, 1973 WISC. L. REV. 400.

13. Day and Brandt, *Consumer Research and the Evaluation of Public Policy: The Case of Truth in Lending*, 1 J. OF CONSUMER RES. 21 (1974).

borrowers claimed to make use of the data to seek out better credit terms. The authors concluded that a negligible relationship existed between knowledge of the effective rate and the choice of a credit source.

In a statistical analysis of one of the first disclosure requirements, the 1934 Securities and Exchange Act pertaining to financial prospectuses, Bentson concluded that the requirements have no effect whatsoever.¹⁴ Others share this skepticism. For example, in a book outlining what he thinks went wrong with required securities disclosure, Kripke argues that "the SEC's regulation of disclosure system needs substantial rethinking and readjustment . . ."¹⁵

In a survey of food nutrition labeling by Lenahan, et al., only 26 percent of shoppers were aware of the labeling, only 9 percent claimed to use it, and no evidence was found of changes in consumer purchasing behavior as a result of its disclosure.¹⁶ Mittlestaedt found the U.S. Department of Agriculture's seven tier system of beef grading to be of little use to consumers because most retail foodstores sell only the top or top two grades and because the basis of the gradings — marbled fat content — is no longer considered relevant by nutritionists to determining beef quality.¹⁷

Some studies of disclosure, however, do claim to identify links between information and action. For example, in a review of unit pricing studies, Ross found that between 60 and 70 percent of shoppers were aware of the existence of unit prices, that 50 percent understood the concept, and that 5 to 38 percent claimed that their purchasing behavior changed as a result of this data.¹⁸ Open dating of perishable foods also is considered to be an effective means of increasing consumer purchasing power. In one study, Stokes, et al., found that 65 percent of the shoppers noticed the dates, 36 percent correctly interpreted them, and that a 50 percent reduction in spoiled food losses occurred subsequent to adoption of disclosure.¹⁹ The success of these particular disclosure systems may be attributable to their relevance to the decision and low processing costs: the data is readily ac-

14. Benston, *Required Disclosure and the Stock Market: An Evaluation of the Securities and Exchange Act of 1934*, 63 AM. ECON. REV. 132 (1973).

15. H. KRIPKE, *THE SEC AND CORPORATE DISCLOSURE: REGULATION IN SEARCH OF A PURPOSE* 31 (1979). For further discussion of this issue see e.g., *ECONOMIC POLICY AND THE REGULATION OF CORPORATE SECURITIES* (H.G. Manne, ed. 1969).

16. Lenahan, et al., *Consumer Reaction to Nutritional Labels on Food Products*, 7 J. OF CONSUMER AFFAIRS 1 (1973).

17. R.A. Mittlestaedt, *Consumer Protection and the Value of Information*, in *THIRD ANNUAL CONFERENCE OF PROCEEDINGS OF THE ASSN. FOR CONSUMER RESEARCH* 101-106 (M. ven Katesan ed. 1972).

18. I. ROSS, *Applications of Consumer Information to Public Policy Decisions* in *MARKETING ANALYSIS FOR SOCIETAL PROBLEMS* 42 (J. Sheth & P. Wright eds. 1974).

19. R.C. STOKES, ET AL., *FOOD DATING: SHOPPERS' REACTIONS AND THE IMPACT ON RETAIL FOODSTORES*, REPORT NO. 984, USDA ECONOMIC RESEARCH SERVICE, 1973.

cessible at the point of purchase decision, and the meaning of the data is relatively easy to comprehend and unambiguous.

We see from these studies that carelessly designed and implemented disclosure schemes can easily fall short of their goals. On the other hand, a major disappointing feature of these studies is that they generally have focused only on buyers and failed to address the question of supplier responses to disclosure. For instance, to assert that "only" 10 percent of consumers change their purchasing behavior misses an important point about suppliers. In markets where tastes are relatively uniform and the industry structure is competitive, a small portion of consumers can effectively "police" the market. And since 10 percent of the consumers may be more than enough to induce suppliers to improve their products, the disclosure systems that were studied may be more effective than the researchers have suggested. Nevertheless, we may take as an important lesson from these studies that the success of disclosure about educational sorting partly will depend on the relevance, simplicity and timing of the information disclosed.

Let us turn now to studies of governmental disclosures. The primary study we will summarize is one of the Illinois Freedom of Information Act conducted as a joint effort by the Northwestern University Law Review and the Northwestern University Center for Urban Affairs between August 1971 and June 1972. In the preface to the study, Marshall Patner argues that although public information disclosure and accessibility to government are socially desirable, there exists within most branches and agencies of the government a "common belief" to the contrary.²⁰ That is, he argues that those who govern are afraid that public information will lead either to a sharing of existing governmental power or accountability to the public and that these outcomes are resented. Hence the common bond of the bureaucrat is "How Not To Make Public Information Public."²¹

In an introductory essay to the study, G. Larry Engel discusses a dozen or so tactics of bureaucratic avoidance, obfuscation and neutralization of disclosure requirements.²² For example, variable fees can be charged to discourage inquiry; in particular, fees may be set relative to the perceived threat of the inquirer. Understandable legal rules that agencies honor only requests for "identifiable records" can be perverted by requiring inquirers to have specific and often unavailable details such as letter dates

20. Patner, *Preface to Research Study: Public Access to Information*, 68 NW. U.L. REV. 177 (1973).

21. *Id.* at 178.

22. Engle, *Introduction: Information Disclosure Policies and Practices of Federal Administration Agencies*, 68 NW. U.L. REV. 184 (1973).

and file title of documents. Sensitive information can be "hidden" in nonobvious offices or agencies, increasing the difficulty of tracking down the proper place to make the requests. Another strategy for hiding sensitive nonexempt information is to commingle it with exempted records. Incomplete information can be released in the hope that inquirers will be satisfied. The simple tactic of delay can be used to discourage inquirers, or one may simply lie about the existence of records which the agency wishes to protect.

Engel quotes Ralph Nader: "[G]overnment officials at all levels in many of these agencies have systematically and routinely violated both the purpose and specific provisions of the law."²³ The empirical case studies which comprise the bulk of the Northwestern publication confirm this general overview of agency capacities and behavior. An experiment designed by the researchers to test the effects and effectiveness of Illinois public information disclosure laws is instructive.²⁴

The experiment involved two stages. First, letters from five fictional citizen groups (2 right-wing, 2 left-wing, 1 neutral) requesting information (clearly defined as within the state's disclosure laws) were sent to more than 200 local and state agencies. A balanced distribution of "hard" and "easy" to locate information was sought.

Only 50 of the 111 total requests were even answered. Twenty of the responses were to the most innocuous requests. Quality of response did not vary across left-wing and right-wing requestors, although the seeming hostility of requests reduced both frequency and quality of responses. Information "favorable" to agencies was disclosed in greater quality and quantity, even when it was more difficult to obtain than "easy, unfavorable" information.

The second part of the experiment studied the behavior of agencies when visited by observers in various predetermined manners and roles (e.g., aggressive or nonaggressive, naive or well-informed). To each of nine of the agencies, five visits were made to follow up on the letter requests. In analyzing the results, the researchers emphasize the importance of the perceptions that bureaucratic "keepers" of information had about "seekers" — whether they were friends or enemies, sought conflict or cooperation, were one-timers or regular players in relation to the bureaucracy. The less the agencies saw it as in their self-interest to cooperate, the more bureaucratic disclosure-avoidance tactics were used.

The authors' analysis also suggests that the skills, tactics and resources

23. *Id.* at 220-21, n. 219, quoting Nader, *Freedom from Information: The Act and the Agencies*, 5 HARV. C.R.C.L. L. REV. 1, 2 (1970).

24. See Divorski, Gordon and Heinz, *Public Access to Government-Information: A Field Experiment*, 68 NW. U.L. REV. 240 (1973).

of the "seekers" are important to the dynamics of disclosure. One dimension of strategy concerns power/leverage relationships. For citizens lacking important institutional resources or information to trade, the authors note that threats of publication, exposure tactics, legal action, and bribes all provide influential leverage in dealing with officials. Another dimension of strategy is attitude. Innocuous, deferential and cooperative action were effective ways to "short-circuit" agency fears and defense mechanisms.

Of course, experience with laws under which citizens ask for information may not be fully relevant to school sorting disclosure proposals which give affirmative outreach duties to school officials. Furthermore, school officials may perceive families wanting information differently from the way other agencies that have been studied perceive those seeking information from them. Nevertheless, these findings about freedom of information acts ought to serve as a warning to those who might idealistically assume that merely to impose a legal duty to disclose on school officials actually will result in the spirit of the obligation being followed. At a minimum, they suggest that effective implementation of disclosure requirements would be most promising if those given the duty to disclose could be made to see that it was in their own best interest to do so.

III. Summary and Conclusion: Part I

We are interested in the role that disclosure of information might play in improving school sorting decisions. By sorting, we refer to the matching of particular students with particular teachers, courses, grade levels and schools. As a starting point, one must understand current practice in order to consider how increased disclosure might change it. To our surprise, we did not find any studies of actual sorting practices in the literature. This led us to conduct our own field survey, interviewing more than 100 knowledgeable persons (teachers, principals, counselors, district administrators, parents and high school students) from seven diverse California school districts. For elementary, junior high and high schools in these districts, we reviewed teacher and course assignment procedures, procedures for changing teachers and procedures for assignment to schools.

One striking aspect of the sorting process reviewed is the lack of formal information provided by the schools about them. No elementary school had a formal policy for informing parents about who makes teacher assignments or the criteria used. There is no policy of explaining to parents why their child has been assigned to a particular teacher. Even in those few schools which encourage parental expressions of teacher preference, no formal mechanisms exist for providing information upon which to base

these preferences. While some of the above information may be provided through parent-teacher conferences, no school had formal policies concerning what is discussed at these conferences. Parents desiring any of this information must seek it out informally.

At the junior high and high school levels, the story is much the same. No school had a formal policy for informing parents about how class assignments are made, either in general or with respect to their own children. While parent approval of course schedules is sought, parents are not generally given information about the courses other than their titles and perhaps the names of the teachers. At the high school level, we found no examples of information provided to parents to help prepare their children for effective participation in the arena scheduling process through which most students assemble their programs. Again, information about these processes must be obtained through informal channels.

Similarly, no school formally informs parents that they might wish to request a teacher change, nor does any school have a written procedure or written criteria for handling such requests. At the secondary school level, students usually are told how they may change courses (and teachers) during the first few days of a term, but the possibility of making a teacher change after these first few days is generally not announced. When the school initiates such a change, there is no formal policy for alerting parents that the change is under consideration or what criteria are being applied; sometimes parents are not even informed that the change has been made.

In terms of school assignment, none of the districts that we visited had any written public information explaining how specific attendance areas were drawn. In the one district with open enrollment, substantial disclosure policy exists to inform parents about the opportunities and the selection procedure used by the district. However the other school districts fit the more predominant pattern of little information disclosure. Some of these districts do have printed booklets about this matter available to parents upon request, but none undertakes outreach efforts to inform parents about the availability of, or criteria for, school transfers.

What should one make of this? Given the lack of formal disclosure, it certainly seems plausible that requiring more information to be provided might be beneficial. On closer examination, as we have shown, it is quite complex to assess whether particular information disclosures are likely to have benefits greater than costs. In part this is because people place differing values on the different types of benefits and costs. But it is also complex because the nature of the benefits and costs may not be obvious, and because predicting how disclosure will affect the levels of these benefits and costs is difficult. This article seeks to encourage thoughtful consideration of the issues by offering our conception of the nature of the benefits

and costs, and some hints on predicting the effects of disclosure requirements drawn from experiences with disclosures in other settings.

We have discussed the nature of benefits in terms of two broad categories. The first we refer to as "informed choice," in which we think of education primarily as a private good. We have shown that decision-making can be done by consumers or by suppliers. For most private goods the former dominates. By contrast, however, educational sorting decisions are now largely supplier made, although whether there is a good rationale for this is another matter. In other circumstances where supplier decision-making occurs (e.g., medical care), consumer preferences are often thought to be transparent to the supplier (e.g., to "get well"). Furthermore, intelligent choice from among alternatives generally requires considerable technical expertise (e.g., medical education). It is not obvious to us that educational sorting decisions are of the type which fit this pattern: parental and student preferences may not be transparent, and relevant expertise about the consequences to the student of alternative sorting choices is probably shared by families and educators. Nevertheless, since supplier decision-making is the dominant pattern in use, another aspect of systems with supplier decision-making is critical to recognize: they must be carefully structured to give suppliers strong incentives to act in the consumer's best interests.

From the perspective of informed choice, we see two different ways that disclosure about school sorting might lead to benefits. One is that families sometimes have relevant information (either about their preferences or knowledge about likely consequences of particular sorting decisions) which, if made known to the schools in response to disclosure efforts, can lead to more informed sorting decisions. The other is that disclosure is a mechanism for heightening the weak accountability of decision-makers to parents and students. Accountability is weak because some of the mechanisms which might ensure it do not work well; e.g., election of school board officials only expresses community preferences at a very aggregated level, competition from alternative educators is practically nil, and the private market for relevant sorting information fails for structural reasons. Thus information disclosure, by increasing the visibility of school sorting procedures, may be able to strengthen school incentives to act in the best interests of their consumers.

Our second benefit category is from the perspective of the citizen's right-to-know. It arises from the more public aspects of educational sorting decisions and considers the special responsibilities of democratic institutions. A sorting decision affects the individual child, but it also may affect the parents, classmates and taxpayers in the community. The decision-making process must consider these latter factors as well, and the larger public affected needs some mechanisms of control over the policies

and practices instituted. An important control strategy is to provide to the public, in various ways, information about the policies and practices.

We describe three different ways in which disclosure might generate benefits in terms of the citizen's right-to-know. Concerning general policy setting, disclosure may lead to increased consent of the governed. For example, families might appreciate understanding the process used to decide for or against a general sorting policy such as ability-grouping, even if they do not agree with the policy itself. At the micro level, disclosure may lead to better control of official abuses. Favoritism in responding to teacher assignment or transfer requests, for example, might be reduced. Finally, disclosure may foster the exercise of entitlements, e.g., to attend a county-run vocational school, or simply to have a family's preferences or insight about a sorting decision reasonably considered.

The discussion of benefits looks on the bright side of information disclosure, but of course disclosure would incur costs as well. Costs arise from producing information, communicating or disseminating it and processing it. If a teacher is asked to spend time on information disclosure, then presumably the teacher will spend less time on other things of educational value. While some educators may look upon information disclosure as an opportunity to receive well-deserved credit, others may be defensive and bear costs in terms of fear or criticism. The demoralization of the latter can rub off on co-workers as well. Parents notified of an entitlement to express a preference about teachers face costs of gathering information, and may decide to avoid the costs by ignoring the opportunity. Families may suffer needless trauma from the disclosure of negative information about a child, instead of the more discreet exercise of an educator's judgment to resolve the problem. A disclosure regime also may entice school officials to throw over the valuable exercise of professional discretion in favor of less individualized, but more easily defended general rules. These examples of costs illustrate the negative potential of information disclosure, and their likelihood and magnitude should be considered along with the benefits expected.

In order to aid our understanding of likely benefits and costs, we looked at experience with disclosure efforts in other areas. Researchers have had difficulty in demonstrating substantial changes in consumer behavior arising from disclosure requirements applied to the private sector. The exceptions involve supermarket purchases, where unit pricing and dating of perishable foods has been found to affect consumer behavior in the intended way. This success probably is due to the easy availability and comprehension of the information at the time of decision. Yet all of these studies may underestimate the beneficial effects of disclosure by focusing primarily on consumers; private suppliers of particular goods may not need to lose many consumers in order to be spurred to improve their

market offerings. Nevertheless, the literature clearly suggests to us that successful disclosure efforts about educational sorting probably will be characterized by easily comprehended and timely information that is truly useful for decision-making.

Unlike the private market studies, the few studies of disclosure applied to governmental institutions have focused on the suppliers. This literature emphasizes the importance of bureaucratic resistance to disclosure and the myriad of strategies bureaucrats use to frustrate the intent of the disclosure requirements. An important conclusion from this review is that information disclosure about educational sorting decisions is most likely to have positive impact when the disclosure efforts are supported by the educators involved.

In sum, the processes for making educational sorting decisions have not been well-scrutinized. Our field survey suggests that these processes operate with rather little community knowledge about their specifics and the rationales for them, and with little community input to them. Because community preferences and knowledge can serve the cause of more informed choice, and because informed community support can improve satisfaction with governmental institutions, information disclosure about educational sorting has the potential for achieving substantial benefits. However, information disclosure imposes costs as well, and prospects for obtaining the benefits are threatened unless the costs to families and educators are low enough to encourage their supportive participation.

