

*Disparate Impact, Public-School Closures and Parental Choice, 2014*  
CHICAGO LEGAL FORUM 289 (2014)

Nicole Stelle Garnett, Notre Dame Law School

Abstract: We live in an era of parental choice. Today, forty-two states and the District of Columbia authorize charter schools, and nineteen states and the District of Columbia permit students to use public funds to attend a private school. During the 2012–2013 school year, nearly 2 million children attended charter schools, and nearly 250,000 children received publicly funded scholarship to attend a private school. The expanding menu of publicly funded educational options is one (but by no means the only) factor contributing to current, intensely controversial, waves of urban public school closures. In school-closure debates, proponents of traditional public schools frequently demand a reduction in parental choice policies in order to preserve neighborhood public schools. These demands are reflected in complaints alleging that school closures, and the parental choice policies influencing them, violate Title VI's disparate-impact regulations. This Article argues that, absent evidence of intentional discrimination in the adoption or implementation of parental choice policies themselves, these regulations should not be interpreted as requiring state and local education officials to restrict parental choice programs. Disparate-impact analysis requires an inquiry into the potential harms and benefits of, and alternatives to, education policies that neither federal officials nor federal judges are well-situated to evaluate. To illustrate these complexities, the Article focuses on the frequently asserted claim that traditional neighborhood public schools are more-effective community institutions than choice schools.