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Testimony Before the District of Columbia Council
Committee of the Whole & Committee on Education
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Public Hearing on:

B23-0199, the "Public School Transparency Amendment Act of 2019"

and

B23-0281, the "Public Charter School Closure Amendment Act of 2019"

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Introduction

Good morning, Chairman Mendelson, Chairman Grosso, and members of the Committees. My name is Sharra E. Greer. I am the Policy Director at Children’s Law Center¹ and a resident of the District. I am testifying today on behalf of Children’s Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With nearly 100 staff and hundreds of pro bono lawyers, Children’s Law Center reaches 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. Nearly all the children we represent attend DC public schools.

I appreciate this opportunity to testify on the “Public School Transparency Amendment Act of 2019” and the “Public Charter School Closure Amendment Act of 2019.” As we testified in June, Children’s Law Center believes that transparency is an important tenet of democracy because it provides residents and their elected representatives the ability to meaningfully participate.² This is particularly critical for a public education system that is a mix of traditional and charter schools and which requires students and parents to make important choices about what school to attend. We commend both Councilmember Grosso and Councilmember Allen for their continued leadership in demanding transparency in our schools.

At this time, the Council is considering several bills intended to increase transparency and accountability in both traditional and charter public schools.³ Only

one of these bills, the “Public School Transparency Amendment Act of 2019,” explicitly requires charter schools to comply with the Freedom of Information Act of 1976 (FOIA).⁴ For several reasons, Children’s Law Center strongly urges the Council to ensure that any legislation passed regarding public school transparency and accountability includes a provision requiring charter schools to comply with FOIA.

First, Children’s Law Center believes that all public schools – whether they are traditional or charter – should be held to the same standard of transparency. Currently, all DCPS schools are subject to FOIA.⁵ In contrast, only the Public Charter School Board (PCSB) is required to comply with FOIA and only with respect to its own records. The PCSB is not required to obtain information in the possession of individual charter schools, effectively insulating those schools from FOIA. There is no reason both traditional and charter schools should not be accountable to parents, students, and other residents in the same way, and, accordingly, be equally incentivized to do their best by students and families.

Further, subjecting charters schools to FOIA is not unusual. The majority of jurisdictions that permit charter schools subject them to FOIA, including Virginia and Maryland.⁶ According to the National Alliance for Public Charter Schools, a national advocacy group committed to advancing the public charter school movement, DC is “an anomaly” in that it does not currently impose these requirements on its charter

schools.⁷ There is no reason why charter schools in the District of Columbia cannot meet the same standards applied to charter schools in most other states.

In addition, making charter schools subject to FOIA would provide families in the District with an important tool for obtaining the information they need to address specific problems affecting their child or make informed decisions about what school would be best for their child. For example, parents frequently want to know the school policies and practices that are relevant to their individual child, so that they can work with the school to craft prospective solutions for issues that child may be facing. Families trying to make decisions about schools may also want to know what kinds of credentials teachers are required to have, what types of special education services are offered, or how special education placements are determined. Most of the time, charter schools willingly provide this information. But sometimes, often in the most challenging situations, charter schools refuse to provide such information, and families currently have no means to compel charter schools to do so.

Further, FOIA is a critical tool for identifying systemic issues in charter schools. There are times when DC families need access to a broader set of data in order to make informed decisions about whether a particular school will work for their child. For example, in the course of our work on behalf of children with special needs, we have encountered families with children in charter schools who have been told that their child would be “retained” (required to repeat a grade), rather than be promoted to the

next grade (and perhaps require special education support and services). For families in this situation, and for prospective families, it would be helpful to know: (a) the policies and standards applied when determining whether to “retain” a student; and (b) statistics on how often and under what circumstances the school has “retained” students in the past. Without FOIA, there is no way for families to obtain this information if the charter school is unwilling to volunteer it.

To take another example, for many families, how a charter school interacts with the police is an extremely important factor in their school decision. These families need to understand the school’s policies for determining when to call the police, when police will be allowed in the school, and whether and under what circumstances the school will allow the police to question students. Families also need to know statistics related to police involvement, in order to understand how these policies play out in real life.

From a systemic perspective, FOIA can also provide another tool for increasing budget transparency. To the extent other methods fail to obtain information necessary for the public to understand how taxpayer money is being used in our charter schools, FOIA provides a backstop. Similarly, information regarding complaints and safety incidents can alert parents to potential systemic problems at a charter school – again helping parents make informed choices.

Ideally, all charter schools would be fully forthcoming and share this information with parents and residents. We expect that most of the time, there won’t be a problem –

the charter school will provide the information families need, and we can all work together to help our kids. But sometimes, families experience serious difficulty obtaining extremely important information from charter schools who have no obligation to respond to families' requests.⁸ It's in these circumstances, that it would be helpful to families and children to have FOIA available.

Finally, we do not believe requiring charter schools to comply with FOIA will be overly burdensome or expensive. Individual charter schools will not be required to create records or documents they don't already have – they would just be required to turn over, upon request, documents and records they already keep and have in their possession.⁹ As a point of reference, for fiscal year 2018, the PSCB responded to 74 FOIA requests.¹⁰ There are roughly the same number of traditional and charter public schools in the District. According to DCPS's most recent annual FOIA report, DCPS received only 130 FOIA requests during fiscal year 2017, and if you average the cost and staff time spent on responding to these requests, it comes out to approximately \$2,000 and less than 50 hours per school over an entire year.¹¹ There is no reason to think that complying with FOIA would be overly burdensome to charter schools and we certainly don't believe that the costs would outweigh the benefits to children and families in the District in terms of increased transparency and accountability in their public charter schools.

Conclusion

Thank you again for the opportunity to testify. I am happy to answer any questions.

¹ Children’s Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With nearly 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² Michael Villafranca, Children’s Law Center, *Testimony Before the District of Columbia Council Committee on Education and Committee of the Whole, June 26, 2019.* (June 26, 2019) Retrieved from <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/CLC-Testimony%20--%20Education%20Budget%20Transparency%20Bills%202019.pdf>.

³ B23-046, The At-Risk School Funding Transparency Amendment Act of 2019; B23-239, The School Based Budgeting and Transparency Amendment Act of 2019; B23-0199, The Public School Transparency Amendment Act of 2019; B23-0281, The Public Charter School Closure Amendment Act of 2019.

⁴B23-0199, The Public School Transparency Amendment Act of 2019, at 5, In 128-33.

⁵ DC Code §§ 2-531-539.

⁶ See Md. Code Ann., § 4-101 et seq.; Va. Code Ann. § 22.1-212.6(B), § 22.1-212.6:1(D), and § 2.2-3700 et seq.; Ala. Code § 16-6F-9(d)(3); Cal. Ed. Code § 47604.1(b); Colo. Rev. Stat. § 24-72-203(1)(a); Conn. Gen. Stat. Ann. § 10-66aa(1); Del. Code Ann. Title 14, § 503; Fla. Stat. Ann. § 1002.33; State Charter Schools Commission of Georgia, *The Legal Obligations of Operating a State Charter School as a Local Educational Agency (LEA)*, retrieved from <https://scsc.georgia.gov/document/legal-obligations-state-charter-school/download> and Ga. Code Ann. § 50-18-70(b)(1); 5 Ill. Comp. Stat. Ann. 140/2(a) and 105 ILCS 5/1E-1 et seq.; Iowa Code Ann. § 256F.4; Iowa Code Ann. § 256F.5; Kan. Stat. Ann. § 72-1906; Ky. Rev. Stat. Ann. § 160.1592; Ky. Rev. Stat. Ann. § 161.141; La. Rev. Stat. Ann. § 17:3996; Me. Rev. Stat. Ann. 20-A § 2412; Mass. Gen. Laws ch. 71 § 89; Mass. Gen. Laws ch. 71 § 89; Mich. Comp. Laws Ann. § 380.503; Minn. Stat. Ann. § 124E.03(5)(a) and Minn. Stat. Ann. § 13.03(1); Miss. Code Ann. § 37-28-45; N.J. Stat. Ann. § 18A:36A-11; N.Y. Educ. Law § 2854 and New York City Charter School Center, *Frequently Asked Questions: Charter Schools and New York’s Freedom of Information Law*, retrieved from https://www.nyccharterschools.org/sites/default/files/resources/FOIL_FAQ_071813.pdf; Or. Rev. Stat. Ann. § 338.115; Tenn. Code Ann. § 49-13-105; Tenn. Code Ann. § 49-13-111; Tex. Educ. Code § 12.1051(b).

⁷ Perry Stein, *Should D.C. Charter Schools Follow the Same Rules as Traditional Campuses?*, Washington Post (Feb. 4, 2019). Retrieved from https://www.washingtonpost.com/local/education/should-dc-charter-schools-follow-the-same-rules-as-traditional-campuses/2019/02/04/544cfb36-2644-11e9-81fd-b7b05d5bed90_story.html.

⁸ The PSCB website includes a “Draft School Transparency Policy” dated March 18, 2019 (available at: <https://www.dcpscb.org/sites/default/files/report/2019-03-18%20School%20Transparency%20Policy%200.pdf>). This draft notes that the “requirements of this Policy will not take effect until the Data and Document Submission Policy is revised to incorporate this Policy.” The most recent version of the Data and Document Submission Policy available on PSCB’s website is dated February 11, 2019, indicating that the Draft School Transparency Policy has not yet been incorporated and is therefore not yet in effect. Even if this policy were in effect, however, it still does not provide children and families full access to the information they would be able to obtain through FOIA. Most notably, the PSCB’s draft policy: (1) identifies a narrow set of documents and information schools will be required to post on their websites,

which does not include outcomes-related information or data; and (2) does not include a mechanism for families to request information from the school if they want information not included in this narrow set.

⁹ DC Code §§ 2-532 provides in part that any person has the right to copy “any public record of a public body.” DC Code §§ 2-539 defines “public record,” by reference to DC Code §§ 2-502, as including “all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body,” including information stored in an electronic format. This language does not require the creation of records that are not already prepared, owned, used, in the possession of or retained by the public body.

¹⁰ Muriel Bowser, Office of the Mayor, *FY 2018 District of Columbia Freedom of Information Act Report* at 12 (Feb. 25, 2019). Retrieved from https://os.dc.gov/sites/default/files/dc/sites/os/page_content/attachments/FOIA%20FY18%20Annual%20Report%20updated%202.25.19.pdf

¹¹ Eboni J. Govan, DCPS, *FY 2017 Freedom of Information Act Report*. Retrieved from https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/FY%202017%20DCPS%20Annual%20FOIA%20Report_0.pdf