



Testimony of Dacia Toll

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Submitted to the Connecticut General Assembly Education Committee in Opposition to S.B. 1096

March 19, 2015

Good afternoon Chairs Fleischmann and Slossberg and members of the Education Committee. My name is Dacia Toll, and I am the president of Achievement First (AF), a non-profit network of public charter schools founded here in Connecticut 16 years ago; we currently serve nearly 3,500 students in Bridgeport, Hartford and New Haven.

I'm here today to express strong opposition to Senate Bill 1096, An Act Concerning Charter Schools. While we have several concerns with this legislation, I would like to primarily focus on two of its most troubling aspects. First, this legislation would effectively impose at least a two-year moratorium on the creation of any new public charter schools in Connecticut. Second, this legislation would inhibit the ability of non-profit organizations from supporting charter schools and takes too blunt an approach to addressing a very complex issue.

First, the moratorium. While Connecticut has made some important progress in recent years in terms of educational policy, and many members of this distinguished body have played an important role in that progress, there is still a long way to go before every child in this state has access to the kind of great public school education that can position them for success in college, career, and life.

The hard truth remains that, according to federal NAEP results, Connecticut still has the widest achievement gap of any state in the country in several grades and subjects. Further, even students who make it to college generally aren't graduating. A recent national study by The Pell Institute showed that only 9 percent of low-income students are graduating from college, compared to 77 percent of high-income students. Perhaps even more alarming is the fact that while the number of high-income college graduates has grown by 40 percentage points over the last 45 years, the number of low-income graduates has remained largely flat, increasing by just 3 percentage points over the last 45 years.

This data clearly demonstrates what we all instinctively know: there is a direct link between educational inequality and income inequality. Sadly, however, in terms of both education and economics, the gaps between rich and poor are getting wider – and perhaps nowhere more than in our state, which typifies an increasing divide between “haves” and “have nots.” With far too few exceptions, our low-income students are attending the lowest-performing public schools in our state, and our high-income students either attend strong public schools or their parents have been able to choose great private schools. This educational inequality then goes on to have devastating long-term impacts on individual children and entire communities.



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The question is what are you as our state education policymakers going to do about it? As someone who works in our state's big cities, what I see tells me that we need bolder actions on a much faster timetable than ever before. We can't lose another generation of Connecticut's children.

That's why I find SB1096 so puzzling. Given the stakes for kids and communities, we need more great public schools – district, magnet and charter – not fewer of them, and we need them now.

High-quality charter schools have a strong track record of academic results, while serving many of the state's highest-need students. According to the most recent comprehensive set of testing data from the Connecticut State Department of Education, 86 percent of charter schools outperformed their host district averages on the CMTs, and 83 percent of charter schools outperformed their host district averages on the CAPT. To share one Achievement First-specific proof point, AF Amistad High was ranked the number one high school in the state for African-American student performance, and ranked the fourth best high school in the state overall by *U.S. News & World Report* in 2014.

Again, this is all the while charter schools, on average, serve a student population that's over 70 percent free and reduced priced lunch (FRPL). At AF, we serve a student body that's 87 percent free and reduced price lunch.

To be clear, I share these numbers not to boast, but to simply say that charter schools are part of the solution, they are getting great results, and most importantly they are making a real difference in the lives of Connecticut students.

This bill would deny opportunity to the nearly 3,600 families currently on charter school wait lists and the nearly 40,000 students who currently attend schools where the majority of them don't read, write or do math on grade level. My guess is that all of you worked hard to make sure your children had access to good schools. I cannot understand how you could now vote to deny good schools to other parents – and especially low-income students who are most dependent on public education – and on us – to create real opportunities for them.

Next, I'd like to briefly address the provision of this bill that would, in a "one size fits all way" subject non-profit organizations, particularly CMOs, to the Freedom of Information Act (FOIA), without due process and consideration by the Freedom of Information Commission (FOIC).

First, it's unnecessary. Charters schools, and by extension the work that non-profit CMOs do with charters, are already subject to FOIA. Any communication or document that speaks to the non-profits support of charter schools is already subject to FOIA under current law. So this bill, by definition, would only cover the work of a non-profit that is not related directly to its support charter schools. A process already exists, via the FOIC, to determine whether a non-profit, such as a CMO, constitutes the "functional equivalent" of a public agency. If, using a thoughtful, 4-part test, it is the equivalent of a

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public agency, then it is subject to FOIA. If it is not, then the operations not relating to its public function, are not subject to FOIA.

Second, this provision is discriminatory. It unfairly singles out non-profits who support and provide services to charter schools. Just because a non-profit chooses to work with a particular constituency, they shouldn't be denied due process via FOIC, especially since no two CMOs are alike, just like no two non-profits are alike. They provide different services, have different service models, and many provide services to non-charter entities as well. This is precisely why FOIC's thorough, case-by-case approach exists and a blanket "one-size-fits-all" FOIA policy is the wrong approach.

Thirdly, it would be incredibly burdensome to CMOs, as FOIA compliance would significantly distract, undermine and obstruct non-profit CMO resources and manpower from its most important work: providing high-quality support to charter schools, students and staff. We want to focus on the work of helping schools change the life outcomes of kids, not processing a litany of FOIA requests from charter school detractors and naysayers.

To be clear: while we understand, appreciate and support the call for strong accountability and common-sense transparency as it relates to charter schools and our work, this is simply the wrong approach. For example, we support this bill's call for additional annual disclosure requirements, in the form of releasing certified financial audits and components of the IRS 990 form for non-profits, and are open to other accountability measures as well.

In conclusion, I urge you to oppose this bill and instead support policies that encourage the creation of more high-quality schools. Thank you for allowing me the opportunity to testify before you today, and with that I'm happy to answer any questions you may have and look forward to working together to expand opportunity to all Connecticut's children.

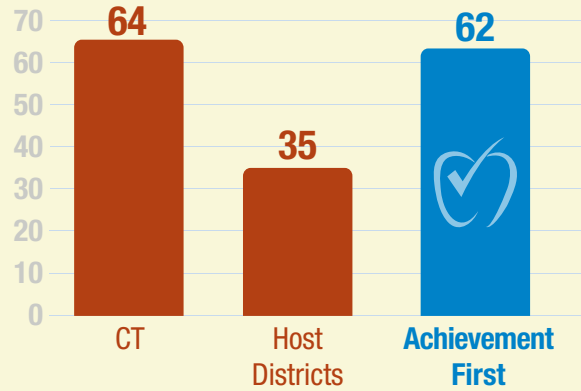
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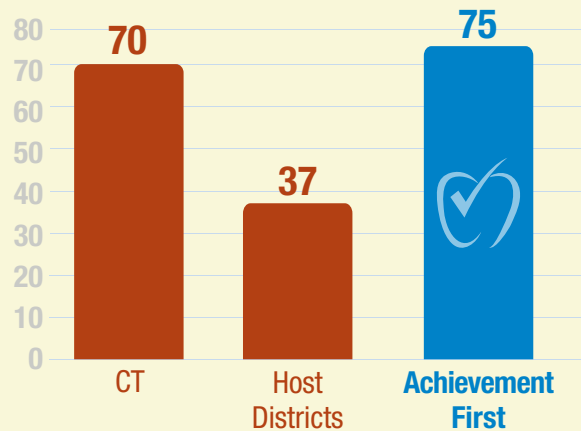
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2013 CONNECTICUT MASTERY TEST MATH, READING, WRITING

% of 4th-Graders At or Above Goal

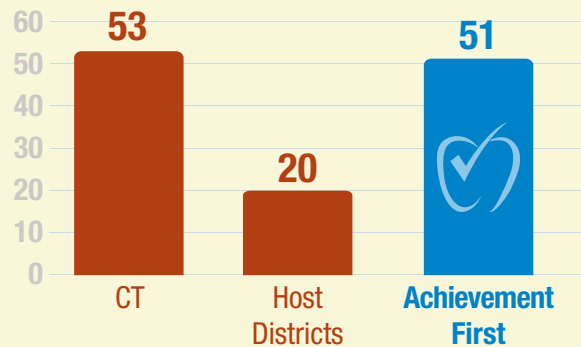


% of 8th-Graders At or Above Goal



2013 CONNECTICUT ACADEMIC PERFORMANCE TEST – ALL SUBJECTS

% of 10th-Graders At or Above Goal



WHY WE SHOULD NOT HAVE A BLANKET FOIA REQUIREMENT FOR NON-PROFITS SERVING CHARTER SCHOOLS

(SB 1096)

I) IT IS NOT NECESSARY:

A) Charter schools and the work that CMOs do with charters are both already subject to FOIA.

- Every one of Connecticut's 22 public charter schools is already subject to FOIA, including those that have contracted with a CMO to support the school.
- The direct support that a CMO provides to a school is also already subject to FOIA, as are any documents or communication shared between the charter school and the CMO.
- The services agreements that govern all aspects of the charter school-CMO relationship must be submitted and approved by SDE and are public documents.

B) A process already exists (FOIC) to determine if non-profits (including CMOs) should be subject to FOIA.

- There is existing law and long-standing precedent to determine whether, when, and to what extent FOIA applies to non-profits who are in some way serving as the "functional equivalent" of a government agency.
- The nature of a non-profit's relationship to the school determines whether it is the "functional equivalent" of a public agency, and that is the correct standard. This determination is made by the nonpartisan Freedom of Information Commission (FOIC) and the "functional equivalency" test looks at four factors:
 - (1) whether the entity performs a governmental function; (2) the level of gov't funding; (3) the extent of gov't involvement or regulation; and (4) whether the entity was created by the gov't.
 - If, after careful review, it is determined that a CMO is the functional equivalent of a public agency, the CMO will be subject to FOIA.
- FOIC has been making determinations about FOIA's application to non-profit organizations serving as public agencies for decades. These standards work so there is no need to legislate the issue (The FOIC is currently hearing cases involving CMOs).

II) IT IS DISCRIMINATORY & HAS DANGEROUS IMPLICATIONS AND PRECEDENT FOR OTHER NON-PROFITS:

A) It negatively implicates & affects a wide-variety of non-profits.

- Traditional public schools are free to contract with any number of non-profit educational organizations, and they do (*e.g.*, after-school providers, curriculum providers, back-office service providers, social support services for students, etc.). Like CMOs, many of these non-profits could be viewed as providing "educational design or implementation," "whole school design services," or "financial, business or operational, and administrative functions."
- Under current law, most of these non-profits are not covered by FOIA – but the new, overly broad bill language would cast some of these as "CMO" relationships if they choose to serve charter schools.

B) The bill unfairly singles out non-profits who provide services and supports to charter schools.

- Non-profit service providers should not be treated differently (absent due process via FOIC) or discriminated against by the legislature simply because of the constituency they serve (i.e. charter schools). It is unfair and discriminatory to subject non-profits working with charter schools to FOIA while those same service providers working with traditional public schools would not be subject to FOIA.

C) It's a slippery slope: Once the Legislature starts singling out one type of non-profit to universally subject to FOIA, it sets a dangerous precedent to do the same with another types of non-profits.

III) IT IS TOO BLUNT AN APPROACH:

A) Like all non-profits, no two CMOs are the same and should not be treated with a “one-size-fits-all FOIA policy”

- All CMO’s are different:
 - Some are primarily social service providers like DOMUS and OPP, while others focus more exclusively on a particular academic model like Achievement First.
 - Some exist in Connecticut alone, while others span multiple states.
- Some CMOs provide other services (*i.e.*, not just direct services to charter schools):
 - *e.g.*, DOMUS runs a juvenile review board, a community center, and a youth employment training program – none of which use state funding and all of which would be subject to FOIA simply because DOMUS also supports two charter schools
 - *e.g.*, Achievement First runs an alumni program that supports HS graduates, a leadership development program that trains school leaders in three different districts, and a charter network program that shares best practices with similar organizations across the country. These activities would also be captured by this blanket, one-size-fits-all approach to FOIA.
- The differences b/t CMOs reinforces the importance of the FOIC’s thorough, case-by-case approach.
 - After reviewing each organization against the existing standard, the FOIC might find that one CMO is covered by FOIA, another is not covered by FOIA, and one is partially covered by FOIA (*e.g.*, with respect to certain services or covered for purposes of certain info requests).
- Bottom line, there are significant differences between CMOs that the proposed law does not and cannot capture, which is exactly why the FOIC and its “functional equivalent” standard was established and should be followed.

IV) IT IS BAD FOR CHARTER SCHOOLS, CHARTER SCHOOL STUDENTS, AND CONNECTICUT:

A) It discourages other non-profits from partnering with charter schools.

- SB1096 could have a chilling effect on non-profit engagement with charter schools and/or CMOs, as potential non-profit partners for charters might be concerned about FOIA’s wide-ranging scope into their own organizations and/or their potential pseudo-designation as a CMO. Charter schools could be denied a variety of important support services that other traditional schools enjoy simply because of this blanket FOIA designation.

B) It would negatively impact a CMO’s overall effectiveness in serving charter schools, educators & kids.

- Having to comply with FOIA significantly distracts, undermines, and obstructs non-profits (both in terms of manpower and resources) from the most important work they should be doing: providing high-quality support to charter schools per their service contracts. Non-profit CMOs should be focused on supporting schools, not processing a litany of endless FOIA requests potentially designed as harassment or intimidation.
- Having a FOIA designation creates a chilling effect on a CMO and its internal communications, preventing its employees from providing unvarnished, direct and clear communication within the organization (given every work product, email, letter, etc. is subject to FOIA). This impacts the organization’s overall effectiveness, which in turn impacts its support to schools, school-based staff and students.

D) It limits charter schools from partnering with the organizations they choose.

- As written, SB 1096 appears to prohibit charter schools from contracting with for-profit organizations for certain services (*i.e.*, financial, business, operational, and administrative functions), arbitrarily limiting the options available to charter schools to ensure effective operations. Traditional public schools do not

have such limitations on where they can seek support and many contract with for-profit instructional support programs.

E) It will further discourage high-performing charter operators from working in Connecticut.

- In our research, we were only able to identify two states that have relevant laws applying FOIA to CMOs or other relevant service providers.
- Connecticut is already viewed as a very challenging place for education entrepreneurs and successful school organizations to work given the historical inequities in funding for charter schools. SB 1096 and its provision related to FOIA would only make a bad environment even worse, and further discourage leading charter organizations from being able to opening up more high-quality public school options and contributing to closing Connecticut's vexing achievement gap.

V) IT IS THE WRONG APPROACH TO CHARTER ACCOUNTABILITY:

A) Charter schools & CMOs are already subject to oversight.

- As independent 501(c)(3) non-profit organizations, CMOs are already subject to various state and federal requirements like annual independent audits and disclosures as to their board governance, executive compensation and major donors.
- In some cases, charter schools actually have increased transparency requirements.
 - *e.g.*, required posting of board minutes to the organization's website.

B) CMOs and the charter sector welcome additional common-sense accountability measures.

- While we strongly object to the blanket FOIA authorization for CMOs, we would support many other transparency elements called for in SB 1096 – *e.g.*, 990s (the public portion as determined by the IRS) and audits for CMOs be readily available on the SDE website, albeit this should be within the context of comparable legislative requirements for other non-profits.
- We all want to avoid another problem like FUSE, but it is important to make sure the solution matches the challenges that surfaced in this case.
 - *e.g.*, we have actively supported calls for additional background checks (which almost all charters already did) and would welcome additional transparency or validation of CMO leader credentials.
 - *e.g.*, we also support aggressive enforcement of conflict-of-interest rules.
- **Bottom line, making all communication and action subject to FOIA is an overly broad solution that creates far more problems than it solves.**