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Testimony of the
D.C. Open Government Coalition

By

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Committee of the Whole and the Committee on Education

Of the
Council of the District of Columbia

On the Public Charter School Board

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Chairman Mendelson, Chairman Grosso and members of the committees. I am Fritz Mulhauser, an officer and director of the D.C. Open Government Coalition and a resident of Ward 6. I appreciate the opportunity to testify today on behalf of the Coalition to provide our views on the continuing need to increase public access to information about charter school operations.

We came before you last year in June and October (and twice before the PCSB as well) and are returning to speak to you again to urge action that is supported by a broad community. Last year dramatic new voices of charter parents and teachers spoke powerfully at hearings of the Board and Council about extending the D.C. Open Meetings and Freedom of Information Acts beyond the Public Charter School Board (PCSB) to cover charter schools.

The PCSB did expand information posting requirements for schools, and the Committee on Education marked up a budget process bill to include a requirement to open parts of charter schools' board meetings.

But we're here again because the legislative work remains incomplete and there is not yet a marked-up bill that will align District law with open government requirements that have been applied without difficulty to charters elsewhere.

Our Coalition has great respect for charter schools and supports their independence and autonomy so that they can bring new creativity to designing the schools' education programs. We applaud the dedication of charter schoolteachers, administrators, and board members. However, because public funds are the foundation for charter school education, parents, teachers, taxpayers, and the media should have the same rights of access to records from charter schools as they do from all other public schools in D.C.

In the June and October hearings on related bills witnesses with diverse perspectives provided compelling arguments and examples of the need for greater transparency at the school and Local Education Agency (LEA) level—a need they asked be addressed by applying the D.C. laws on open meetings and open records. Parents told of learning from the press their child's school would close; teachers told of threatened and actual dismissals because they asked too many questions about budget and other management decisions affecting their work. We won't repeat that eloquent testimony.

We'll use the time today to respond again to arguments of those who oppose the transparency objective and suggest amendments to the legislation that can accommodate some of their legitimate concerns.

FOIA Places Too Heavy a Burden on Staff and Diverts Resources?

Yes, FOIA could add some work for staff in finding and reviewing documents responsive to FOIA requests. Complying with any law almost inevitably comes with some cost though that burden is more than offset by the benefits transparency provides. Fortunately the workload is not likely to be great, and the system can be structured to minimize the impact on individual schools.

- As to the size of the burden, experience of charter schools in other jurisdictions and of D.C. public schools suggests there will be no tidal wave of requests that will drown charters. Additionally, the bill requires tracking the volume of FOIA requests to facilitate adjustments should predictions prove wrong.
- We all know that due process in our court system, accessibility for the disabled, assurance of equal opportunity in employment and housing, and similar protections and rights all carry costs, and sometimes not insignificant ones—but they are broadly accepted because they support values fundamental to our society.
- Every state and D.C., plus over 120 countries around the world, have enforceable access-to-information laws. Bearing the costs entailed, the public recognizes the benefits are worth it.
- The testimony by lawyers in big firms who draw on their experience in long, costly, hard-fought and complex federal FOIA litigation is just not pertinent here. D.C. has an efficient and fair administrative appeals process that has resulted in very little litigation, and the courts are well-equipped to manage disputes over large volumes of records such that agency work is not disrupted.

So we shouldn't throw up our hands and say “no” simply because FOIA entails some additional work. We have two further suggestions for managing the work:

Route charter school-level FOIA requests through the PCSB. First, to minimize the burdens and diversion of resources in schools, DCOGC proposes that the legislation require that FOIA requests go initially to the Public Charter School Board. The Board and its staff have some FOIA experience already with a modest workload (under 100 requests a year) and can work with the schools and LEAs to guide them in search and review procedures that will assure efficient

production of responsive information for requesters. Documents found would then be reviewed centrally for exemptions and any needed redactions. This will relieve the schools of substantial administrative burdens, just as the DCPS central office now works with schools to locate FOIA-requested materials in response to requests and review them for release.

We recognize that the PCSB, LEAs and charter schools are not part of the same governmental entity, as are DCPS and public schools. But this system works in other jurisdictions where government contractors and nongovernmental entities carrying out governmental functions with public funds are subject to freedom-of-information laws and respond through an agency, and it can work here as well. And the final disclosure decisions, which may involve questions of law, will be made by a public body already subject to the D.C. FOIA (the PCSB. Appeals of incorrect FOIA judgments would be against PCSB and would go to the mayor or the courts as already provided in the law.

Add some help up front, then review experience with FOIA in charters and add other resources if needed. Second, we recommend that just as training and other resources are provided to the public school system to handle FOIA requests, and just as resources are provided to all schools in D.C. to comply with the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and similar laws, so also some additional resources may need to be available for charter schools to handle any new burdens imposed by FOIA. This need not be included in the legislation; only experience will tell what the additional resource needs, if any, will be. At the outset, legislation should authorize the Office of Open Government to assist the PCSB, LEAs and charter schools and provide training and advice on best practices for handling FOIA requests.

Confidential Commercial and Financial Information, as Well as Student Privacy, May Be at Risk?

Confidential commercial and financial information is already specifically protected by the FOIA and would continue to be in the charter realm. The exemptions in D.C. FOIA, based on similar provisions in the federal statute, protect both the decision-making process of the institutions and certain narrow details about those doing business with them. (Contracts in the normal course are of course not per se exempt, in D.C. government or in the proposal as to charters.) We doubt any court would credit the objection hypothetically raised late in the deliberations last year, that charter boards would defy any general open meetings rule by closing all discussion of school programs on a theory they are private businesses whose “trade secrets” must be safeguarded.

Student records privacy is safeguarded by federal law. The Family Educational Rights and Privacy Act, a federal statute protecting the privacy of student education records, applies to all schools receiving funds under any U.S. Department of Education program. That statute applies equally to D.C. charter and public schools to prevent student records from being disclosed under the DC FOIA.

The Coalition supports public data on staff compensation—possibly phased in. The Coalition recognizes that charters enjoy flexibility to use their resources as the board and managers think best, and as in any other workplace who gets paid what is a sensitive topic. But across the country, governments at all levels make public the salaries of employees paid by taxpayer dollars. Salary information for public school employees is public, and there’s good reason to treat charters

similarly. The obvious benefits, beyond simply knowing how our public funds are spent, include promoting equity and combatting favoritism and discrimination.

Even so, it would be quite easy to accommodate the interest of charter school administrators in addressing possible disparities or inequities before public disclosure: a specific provision could be added to the legislation delaying for an additional period of time application of the FOIA to salaries, so that the individual schools can have time to make any adjustments deemed appropriate.

Conclusion

As so many witnesses have explained in the remarkable hearings over the past year, applying the FOIA and OMA to this sector will help the schools' communities and the general public. That's because transparency laws aim to bring greater accountability to the institutions to which they apply, in turn generating higher levels of trust that goes with increased public understanding of how tax dollars are used. Sunshine on records and meetings also helps lower the chance of undetected corruption, mismanagement, and waste.

We support the full FOIA and OMA proposals still pending before the Council and the expectation they embody that transparency will benefit students, teachers, administrators, regulators, and ultimately taxpayers.

The Coalition appreciates the opportunity to testify today. We urge you to work in the rest of this Council session to finish the job of applying the main open government laws to charters, especially adding our proposals for amending the pending legislation to facilitate more efficient handling of FOIA requests, ease the potential burden on school administrators, and take advantage of the assistance that the Office of Open Government can offer. DCOGC will be pleased to work with you to develop specific language to achieve these objectives.

About the D.C. Open Government Coalition

The Coalition, a 501(c)(3) non-profit, nonpartisan educational and charitable organization, works to enhance public access to government information and ensure the transparency of government operations of the District of Columbia. We believe that transparency promotes civic engagement and is critical to responsive and accountable government. We strive to improve the processes by which the public gains access to government records and proceedings, and to educate the public and government officials about the principles and benefits of open government in a democratic society. Visit our website at www.dcooc.org.