TOLLAND PUBLIC SCHOOLS

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OFFICE OF THE
SUPERINTENDENT OF SCHOOLS

Walter Willett, Ph.D.
Superintendent

March 17, 2017

Dear Senator Formica, Senator Osten, and Representative Walker,

As Tolland residents, we are deeply concerned about the current proposed Governor's budget, as well as some initiatives the state compels school districts to comply with that **waste** precious educational time and resources. Specifically, we are concerned about how this budget will impact our schools. We know you realize the importance of investment in education. Of particular concern for us are the unfunded mandates, standardized testing requirements, and burden of proof requirements put upon the local public schools. These factors are doing harm to both our Town's economic condition, and the school district's overall ability to educate children.

Over the years, the Connecticut state government has imposed over 380 mandates (please see attached *Position On Unfunded State Mandates on Local School Districts*). Many of these are not directly applicable to education and have constituted a considerable financial and logistical burden, including the allocation of more staff. When such significant reductions are being required of a municipality and school system like Tolland, this is totally unacceptable. Please carefully review the document attached, and work in the legislature to free our school system, Town, and children from at least some of these unfunded burdens.

State required standardized testing (SBAC and SAT) also demand an undue burden on the children, and on the finances of the state and the school system. **Please note** that over $13.5 million is paid to AIR (American Institutes of Research) to administer the SBAC test, with another $15.3 million allocated over the years 2016-2019. The SBAC contract is renewed annually for $2.7 million, with yet another $1.9 million allocated in 2016-2017 for "state-administered assessments". The newly-redesigned statewide SAT for 11th graders is promoted as "free" to the parents, but truly costs the taxpayers $4.4 million as the state has a three-year contract with the College Board. As the federal Every Student Succeeds Act (ESSA) eliminates the federal role in teacher evaluation and no longer requires standardized assessment scores be included in them, it eliminates yet another reason for the State of Connecticut to *force* these tests on the children. Finally, the NAEP or National Assessment for Education Progress is a randomly sampled test from the federal government (https://nces.ed.gov/nationsreportcard/) that provides more than enough data to identify an achievement gap and to see how the country is doing without testing *every single child* grades 3-8 and 11, and which does NOT include the science CMT and CAPT days, for upwards of four to five a*dditional* days. In addition,

the opportunity cost of the *labor* of diverting teachers, paraprofessionals, and administrators to the task of administering these assessments is in the hundreds of thousands of dollars.

Finally, the current "burden of proof" law forces School Districts to make a business decision about a child's education to protect the financial interests of the district. This requirement diverts increasingly underfunded resources away from *all* students in the district. Please see the attached *Superintendents' Statement on Burden of Proof.* Once again, given all of the financial constraints and reductions put upon towns like Tolland, this mandate is unacceptable.

As you can see, there are things that can be done in the HERE AND NOW – opportunities to reduce items that exist in next year's budget - that would facilitate meaningful education, ease the budget challenges, and end cruel test and punish, rank and sort, testing politics. Please help us stop pitting parents against school systems, with Superintendents fearful of parent's opting out because of threats of lost state funding, or being identified for special assistance and losing many hours in mandatory training.

How can $250 million be bonded for the XL Center when $1.934 million is asked of Tolland residents to compensate for the state's failure to act responsibly in funding teacher pensions? If a bond is to be done, let it be done to address that burden. In a similar sense, how can the state provide $500 dollars extra for every child in charter schools, when that model has been demonstrated to not only underperform most local public schools in Connecticut, but also across the country? It is putting more funds in a failed model of education and is truly unacceptable.

Please take action now on the aforementioned. The times require it, and your constituents expect it.

Tolland Board of Education:
Sam Adlerstein
Patrick Doyle
Colleen Yudichak
Karen Moran
Kathy Gorsky
Michelle Harrold
Robert Pagoni
Susan Seaver
Jeff Schroeder
Walter Willett, PhD, Superintendent of Tolland Public Schools

Public Policy

SUPERINTENDENTS' STATEMENT ON BURDEN OF PROOF

January 2017

SUMMARY: The current "burden of proof" law forces School Districts to make a *business* decision about a child's education to protect the financial interests of the District rather than an educational decision that benefits the needs of the individual child. Additionally, the law diverts increasingly underfunded resources away from *all* students in the district. We implore you to consider this proposal and look forward to working with you on behalf of the children of Connecticut.

PROPOSAL: Reassign "burden of proof" to the party seeking relief.

We are superintendents. We were elementary, middle and high school teachers. We were psychologists, guidance counselors and social workers. We were school principals. We are parents and grandparents as well as brothers and sisters of general education and special education students. We are stewards of the education for all of the children of the districts we lead. We have chosen a profession and devoted our lives to be advocates for meeting the needs of children to ensure they receive

the best education possible. In the spirit of providing the best education for the students we serve we implore our legislators to consider revising the "burden of proof" that now falls solely on the School Districts. Inherent in Connecticut's regulation on burden of proof is an assumption of wrong doing. We question the logic of this supposition and request that the burden of proof be reassigned to the "party seeking relief" as it exists in all but five states and is authorized through federal legislation. We ask you to consider this change because the current law is harming the very same children it is intended to protect. As written:

Connecticut's burden of proof requirement is not part of the special education due process statute (CGS § 10-76h). Rather, it is SBE regulations that require that, "in all cases . . . the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency" (Conn. Agencies Regs. § 10-76h-14).

There are significant unintended consequences from this law that we are compelled to highlight because they negatively impact our children's education. The current lopsided burden of proof emboldens parents to sue and it has created a cottage industry for lawyers who now "specialize" in special education lawsuits against school districts. This can best be shown through the following case study:

- Consider a beginning third grade student who is cognitively average to above average.
- Consider the same student is a struggling reader and is reading at the end of the first grade level, clearly below expectancy.
- Consider the student has received general education reading intervention services both in the classroom and subsequently out of the classroom.
- Consider the parents' frustration about their child's "lack of growth" and their expressed displeasure with the school's intervention.
- Consider the parents unilaterally place the child in a private school (withdraws the child from the public system) that they believe will better serve their child.
- Consider the parents subsequently provide the district with a FERPA request for disclosure of all materials (emails, documents and testing information).
- Consider the parents request an outside evaluation be performed at the District's expense.
- Consider the parents request a formal Planning and Placement Team (PPT) meeting where they arrive with a Parent Advocate and attorney. School personnel in attendance include:
  - The child's public school third grade teacher
  - The child's second grade teacher
  - The general education reading teacher who worked with the child and has evaluated the child's reading during the prior year
  - The principal of the school
  - The school psychologist who evaluated the child cognitively
  - The school librarian

    - The Director of Special Education who chairs the meeting
- Consider the school district also needs an attorney at the same meeting.
- Consider at the PPT the parents demand the district to pay the $66,000 private school tuition, the associated $30,000 transportation cost, and the $6000 expense for outside "expert" evaluations.

While daunting in its presentation, this fact pattern is common and regularly experienced throughout the State. At first glance there is a logical flow to the sequence of events. But what happens next is neither logical nor in the best interests of the child.

What is missing in these facts is the conversation that a child's reading level evolves at different rates. School personnel who have specialized training in reading confirm this in the meeting. They worked with the child twice per week for one year. Their view is supported by both the second and third grade teachers, who note the child's continued progress (albeit not to grade level) and emphasize the research based strategies they used and would use if the child remained in the school. They are confident they can educate the child.

However, for the parents who compare their child to their neighbor's child who reads above grade level, one can see why they would be alarmed. This is exacerbated by an outside evaluation that further quantifies that the child is dyslexic, a term that is certain to raise concern levels of any parent. The outside evaluator (specialist) spends a total of six hours testing the child to yield these results.

With all of the data presented to the PPT charged with making a determination, the PPT team is left with the undeniable fact that the child has already been unilaterally placed by the parents and most importantly, hovering over their decision of whether or not to accede to the parents' demand is the burden of proof regulation. Stated differently, as part of the unspoken calculus in making a determination, is the understanding that to deny the parents' request would mean that the district must prove to an arbitrator that the child is receiving an appropriate program that is addressing this child's reading needs, that every technicality leading up to the meeting has been followed without fault, and that the parent had the proper participation in the PPT process. Failure in any of these areas likely would result in a decision favorable to the parent. The decision may include full payment as described above, pendency (continuous placement for the child at the unilateral placement through age 21), which in this case could cost $66,000 tuition x 10 years or $660,000 plus $30,000 transportation x 10 years or $330,000, and reimbursement for all legal fees.

Conversely, if the burden of proof was on the parents, it would require them to prove that the district did not have a program that could serve their child, a very different conversation indeed including non-reimbursement for legal fees or pendency expenses.

The most disturbing aspect of this process is that those with the most intimate knowledge of the educational well-being of the child—the teachers, psychologist and learning specialist are very quickly dismissed from the conversation. Because school districts are faced with daunting financial consequences for losing in arbitration, in our example a $1,000,000 dollar decision, administrators are faced with turning the process over to the attorneys who "negotiate a deal." It no longer becomes about what is in the best interest of the child but instead becomes a "business decision." Gone is the voice of the educator who knows the child's educational needs best. Gone is the opportunity to provide an education to the child in the least restrictive environment. Gone is the opportunity for the child to be educated in his / her community school with peers. Gone is the opportunity to participate in school based extra-curricular activities. We are left with lawyers talking to lawyers about children they have never met.

We submit we should never be making decisions about a child's education strictly as a good business decision.

Scenarios like the one described above play out in school districts all across the state. The high cost and high risk of taking a case to arbitration creates a perverse incentive for districts to negotiate agreements through a mediated settlement process where lawyers negotiate outcomes. In a survey of 7 Fairfield County districts, the total cost of mediated settlements in 2015-2016 was $8,323,142 or an average of $1,189,020 per district. In states where the Burden of Proof is assigned to the party bringing the complaint, this number is dramatically lower and even more importantly, decisions about a child's program are made by the experts – the teachers and school specialists.

Sadly, in this environment when educational decisions are replaced by business decisions, not only do districts incur extraordinarily high costs and see taxpayer dollars diverted away from educational programs that serve all students, but relationships between schools and families are often damaged. Mediated settlements generate bitter feelings and strain relationships between districts and families. School personnel who should be a child's strongest support and a family's greatest resource are thrust into an adversarial position which deprives them the opportunity to foster critical connections.

Beyond re-assigning the burden of proof to the party seeking relief, we call on the legislature to reform the special education dispute resolution process. As part of that reform, the legislature should restrict arbitrations to a maximum of three days, and define policies and procedures for standards of practice which guide hearings including developing procedures to ensure consistency among hearing officers, establishing an oversight mechanism for supervisory review, consistency of rulings, and logic of decisions, as well as establishing standards for advocates and outside evaluators.

When educators' voices are silenced, children lose. In the current environment utilized for special education dispute resolution, educational decisions are being supplanted by business decisions led by non-educators. This environment fails children and diverts needed resources away from the classroom. In light of the fiscal crisis facing Connecticut, legislators have an opportunity to correct a wrong, fundamentally serve children more effectively and redirect dollars toward classrooms without impacting taxes. We implore you to consider this proposal and look forward to working with you on behalf of the children of Connecticut.

Connecticut Association of
Public School Superintendents

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CAPSS
LEADERSHIP
FOR THE FUTURE OF LEARNING

POSITION ON UNFUNDED STATE MANDATES ON LOCAL SCHOOL DISTRICTS

JOSEPH J. CIRASUOLO, ED.D
EXECUTIVE DIRECTOR

Over many years, the state government has imposed on local and regional school districts over 380 mandates. Some of those mandates are directly related to the mission of public education and many of them are not.

All of those that are not directly related to the mission of the public schools have constituted a considerable mission creep that has diverted staff time and financial resources from efforts to accomplish the basic mission of the public schools.

Some of those that are directly related to the schools' mission have been so crafted as to cause the allocation of more staff time and financial resources than are necessary to meet the basic mission of the schools. Among those that CAPSS is most concerned about this session are:

Burden of Proof in Special Education Due Process Hearings

- The United States Supreme Court has ruled that the burden of proof in special education due process can be assigned to the party that brings the matter to due process and that CT is one of a small minority of states in the country that does not assign the burden to that party.

- In CT the burden of proof in a special education hearing is always on the school district. This results in increased and unnecessary costs as students are placed in private programs at greater cost to school districts with no benefit to the student.

- Because school systems in CT have the burden of proof always assigned to them, **they settle in many cases for programs that are more expensive than ones that would meet the needs of the children involved every bit as well as the more expensive programs.** This results in an inefficient allocation of resources and crowds out spending on other important educational programs for students in the district.

- **RECOMMENDATION – Place the burden of proof on the party bringing the matter to the hearing.**

Student Data Privacy Act

- Public Act 16-189 requires schools to engage in costly and burdensome negotiations with respect to the software and "apps" used by schools and in the classroom.

- As a result of both the administrative burden of complying with these individual contracting requirements and the fact that some larger service providers refuse to enter into the mandated contracts, educational apps and other learning platforms are being removed from classroom use -to the detriment of student learning.

- **RECOMMENDATION – Postpone implementation until 1/1/19 and in the meantime, activate the task force specified in PA 16-189 and charge it with bringing recommended revisions to the statute to the Legislature in 2018.**

Statutory Seat Time Requirements for Expelled Students

- Conn. Gen. Stat. section 10-233d (d) prescribes that any student who is expelled from a CT school district be given an educational program that aligns with the provision of 900 hours of instruction on an annual basis. This costly statutory requirement is unnecessary because: Programs provided for expelled students are for the most part tutorial in nature so that what might need 900 hours to accomplish in a classroom setting is not needed in a tutorial setting. **The current standard is 10 hours per week.**

- The provision continues the policy of equating quality of program with how long a program is offered without sufficient attention paid to what students actually learn.

RECOMMENDATION – Remove the time requirement for these programs and require them to enable students to be promoted and to graduate in a timely fashion.

Background Checks for Personnel Applications

- Legislation passed last session requires school administrators to contact **all former employers** of a job applicant **without limitation**.

- This requirement is already having an impact on school systems. Some have had to hire additional staff in human resources to manage the load, some have had to reassign staff from other important and necessary functions to deal with the massive amount of paper work involved and some systems are having difficulty keeping up.

- **RECOMMENDATION – Limit the time span for background checks to twenty years.**

Include an administrator in each PPT meeting

- Many experienced staff with expertise in special education attend these meetings so requiring an administrator to attend each meeting is clearly legislative overreach. Administrators are already overburdened with many responsibilities and we believe this is one where their presence is not always needed and that the district would be better served if the administrator spent time on other district priorities.

- **RECOMMENDATION - Eliminate mandate**

Each certified staff must participate in professional development (PD) of at least 18 hours at no cost to employee.

- A task force established by the Legislature has reviewed PD requirements

- **RECOMMENDATION - Enact task force recommendations.**

Conduct an instructional time and usage study to maximize student leaning and community use of facilities

- This mandate is not needed since most schools already perform such tasks as part of their facility scheduling. In addition, many schools have specific policies for facility use and make use of software to schedule space needs and outside requests.

- **Recommendation: Eliminate mandate**

Connecticut Association of Public School Superintendents

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