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Mr. Joseph Rich, Esq.  
Chief, Voting Section  
Civil Rights Division  
Department of Justice  
1800 G Street, N.W., Room 7254  
Washington, D.C. 20006

Re: Submission under section 5 of the Voting Rights Act:

Chapter 91, Laws of 2002 of the State of New York  
Chapter 123, Laws of 2003 of the State of New York

**EXPEDITED CONSIDERATION REQUESTED**

Dear Mr. Rich:

On behalf of the City of New York and the City School District of the City of New York ("City School District"), I hereby submit for your review under section 5 of the Voting Rights Act:

- (1) sections 7 and 8 of Chapter 91 of the Laws of 2002 of the State of New York (hereafter "Chapter 91"), relating to the abolition of community school boards; and
- (2) those portions of Chapter 123 of the Laws of 2003 of the State of New York (hereafter "Chapter 123"), establishing bodies to replace the community school boards, which may be subject to preclearance under section 5 of the Voting Rights Act.

In making this submission, however, we reserve the right to maintain that some or all of these provisions are not "changes affecting voting" subject to section 5 review.

Sections 7 and 8 of Chapter 91 provided for the sunset of community school boards as of June 30, 2003 and established a "Task Force on Community School District Governance

Reform” to conduct public hearings and make recommendations to the Legislature “regarding the community school boards and their powers and duties.”

Chapter 123 of the Laws of 2003 is based largely upon the Task Force’s recommendations. It is designed to give public school parents (who are predominantly minority) a more prominent role in the governance of their local districts, and to avoid problems of over-politicization and corruption which have plagued the community school board system for many years. Chapter 123 provides for the creation of a “Community District Education Council” (“CDEC”) for each community school district and a “Citywide Council on Special Education.”

The provisions submitted have no retrogressive purpose or effect. When viewed in their entirety in light of all the relevant circumstances, as required by the U.S. Supreme Court’s recent decision in Georgia v. Ashcroft, it is apparent that they will result in a significant increase in the opportunity of protected class members to participate in and influence the selection of the parent members of the CDECs.

Each CDEC will consist of 9 members who are parents of children attending public schools within the jurisdiction of the community school district, 2 members appointed by the Borough President of the borough in which the district is located, and a non-voting public high school student selected by the community superintendent of the district. The CDECs’ powers, discussed in Part IV B below, will be those of the community school boards under provisions of law that have already been reviewed by the Department of Justice, and will in addition include some explicit new provisions relating to evaluations of superintendents and other supervisory personnel, and decisions about zoning and school capacity.

The “Citywide Council on Special Education” will consist of 9 members who are parents of children receiving special education services in public schools, 2 members appointed by the Public Advocate, and a non-voting public high school student receiving such services. This council will advise and comment on educational and instructional policies involving the provision of special education services and issue an annual report on the effectiveness of the City District in providing such services.

Chapter 123 delegates to the Chancellor the responsibility to issue regulations establishing the procedure whereby officers of parent associations and parent teacher associations will select the parent members of the CDECs, and a “representative process” by which parents will select the parent members of the Citywide Council on Special Education. The Chancellor published and conducted public hearings in each borough on a set of proposed regulations, and then adopted revisions informed by the public comment and the recommendations of experts in the fields of statistical analysis of census data, voting rights and redistricting.

Under the regulations for CDECs, any parent of a child attending a public school under the jurisdiction of the community school district may nominate himself or herself to be a parent member of the CDEC. The candidates will fill out application and financial disclosure forms (Chapter 123 requires financial disclosure by the candidates). Appropriate parts of the application, including candidates’ statements, will be made public on the Internet and available at district offices where they can be reviewed by all interested persons. A forum will be

conducted in each district for candidates to introduce themselves to the school community (including the parent association and PTA officers who will be voting for the parent members) and the public. Written comments about the candidates will be collected at each forum, and can also be mailed to the Department of Education Office of Community School District Affairs; they will then be distributed to the parent associations and PTA officers who will be making the selection. After this, parent associations and PTAs will be strongly encouraged to conduct meetings at which their members can advise the officers who will be representing their schools in the selection process about their opinions of the candidates. Three officers from the PTA or parent association of each school within the community school district – the President, Secretary, and Treasurer – will each be entitled to cast two votes. The balloting will occur over a period of ten days; balloters will be able to drop off their ballots at their district office or mail them to a central location.

When the ballots are counted, the nine candidates who received the most votes will be deemed conditionally selected, subject to two levels of review. First, because Chapter 123 requires the Chancellor's procedures to "ensure, to the extent possible, a school may have no more than one parent representative on the community council," if there is a case where two or more parents from the same school are among the nine candidates who receive the most votes, only the parent from that school who received the most votes will be deemed selected, and the parent from another school who has received the tenth most votes will be deemed selected. A similar process will be followed in the event there are more such cases. Second, after the balloting the Chancellor will review the applications and financial disclosure forms of the candidates who received the most votes to ensure that they are eligible to serve. In the case of a candidate being found ineligible (*e.g.*, for reasons such as a felony conviction), the candidate with the next highest number of votes will be deemed selected.

The regulations for the Citywide Council on Special Education establish a similar process for selection of parent members of the Council.

The regulations establish a schedule for the conduct of the initial elections for parent members to the end that the selection will have been completed by the 90<sup>th</sup> day after the Department of Justice has made a preclearance determination. The schedule is as follows:

- Days 1 - 30: The selection process is publicized. Parents self-nominate and submit application and financial disclosure forms.
- Days 31 - 35: List of nominees is certified.
- Days 36 – 50: Nominees' forum conducted in each district.
- Days 51 – 80: Feedback on nominees is received from parents and the public and distributed to the parent association and PTA officers; parent associations and PTAs conduct meetings to discuss the nominees.
- Days 81 - 90 Parent association and PTA officers vote.

The same timeframes will apply for subsequent years when parent members of the CDECs are selected, such that the process will be completed by the second Tuesday in May as required by Chapter 123. They will also apply to the selection of parent members of the Citywide Council on Special Education.

The materials enclosed herewith demonstrate that the changes to be implemented pursuant to Chapters 91 and 123 have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language group. To the contrary, their purpose is to improve the public school system -- in which a large majority of the students and parents are persons of color -- by installing a new local governance structure which will give a greater voice to parents. Moreover, if this structure serves its purpose, we will see over time results leading to better educated voters, better prepared for their roles in our City's economy as well as its government.

Statements of the legislators described at Part VI A of this submission, and testimony from the public at the hearings of the Task Force described at Part VI C, dramatically demonstrate the failure of the existing community school board system. While some community school boards have served their districts well, too many are known for corruption, ineptitude, ineffectiveness, and over-politicization. Too often they are perceived by the public to serve the self-interests of their members rather than the needs of our 1.1 million public school students. This system clearly has lost not only public confidence, but also public interest, as manifested by information provided in Part VI B of this submission showing the lack of a full slate of candidates for some districts in the 1999 elections, and the appallingly low voter turnout in all districts. There was a mere average 3.2% voter participation rate in the 1999 elections, down from a nearly as paltry 5.3% participation in the 1996 elections. The 1999 turnout was below 2% in seven districts: Districts 3 (1.62%) and 4 (1.44%) in New York, Districts 9 (1.33%), 12 (1.22%) in the Bronx, Districts 13 (1.81%) and 16 (1.67%) in Kings, and District 29 (1.92%) in Queens. The participation rate was only 2.09% in District 7 in the Bronx. The highest turnout for any district -- District 10 in the Bronx -- was a hardly impressive 7.71%.

The provisions of Chapter 91 submitted here for preclearance respond to public demand for reform by eliminating the community school boards. These changes were supported by a powerful majority of both houses: the bill passed the Senate by a vote of 59 to 3, and the Assembly by a vote of 139 to 5. 21 of the City's 26 Senators, including 9 of the 11 minority Senators, voted for the bill. 51 of the City's 59 Assembly members, including 21 of the 24 minority members, voted for the bill.

Chapter 123 was developed on the basis of the recommendations of a multi-racial Task Force, based in turn on public hearings at which a clear message emerged: parents must have a stronger voice in local school governance. It passed the Assembly by a vote of 117 to 27 (with one member absent and five excused), and the Senate by a vote of 61 to 0 (with one member excused). Chapter 123 garnered the support of nearly all the minority members of both houses of the Legislature, including a member who had previously voted against the elimination of community school boards. In fact, all members of the Senate (including City members and "upstate" members), and all but 5 of the City's 64 Assembly members voted in favor of the bill. (The size of the City's Assembly delegation increased from 2002 to 2003 after redistricting.)

Comparing demographics of eligible voters in the community school board election system to those of parents eligible (all parents of public school students in Kindergarten through grade 8 are eligible) to elect the parent association and PTA officers who will select the parent members of the Councils in the new system contemplated by Chapter 123, one sees a dramatic increase in the representation of persons of color in the three counties covered by section 5 of the Voting Rights Act – Bronx, Kings and New York Counties.

	<b>Voters Eligible to Participate in Community School Board Elections in the Three Covered Counties</b>	<b>Voters Eligible to Participate in PA and PTA Elections in Community School Districts in the Three Covered Counties (<i>All parents of public school students in K-8</i>)</b>
Non-Hispanic White	41.9%	12.5%
Non-Hispanic Black	29.3%	35.4%
Asian	4.9%	9.6%
Hispanic	23.3%	41.9%

Overall, the new law will not have a retrogressive effect; in fact, it will result in a significant increase in the opportunity of protected class members to participate in and influence the selection of the parent members of the CDECs.

Chapter 123 also gives a new voice to parents of children attending schools in District 75, a citywide district which serves students with severe disabilities, including students in home and hospital instruction, and students with hearing and vision challenges. Its 22,000 students are in 58 school organizations, at over 350 sites, in community district schools, high schools, special education schools, hospitals, agencies, and in homes. This citywide district, like the school system overall, serves a predominantly minority population:

<b>District 75 Students</b>		
Non-Hispanic White	3,129	14.1%
Non-Hispanic Black	10,234	46.1%
Asian	956	4.3%
Hispanic	7,647	34.5%
American Indian, Alaskan native	213	1.0%
Unknown	18	.08%
Total minority		85.8%
Total	22,197	

There is no evidence of any retrogressive purpose in the new scheme of parent-centered councils. To the contrary, all the evidence points to the conclusion that Chapters 91 and 123 are intended to empower public school parents – a predominately minority population – as a central part of a larger strategy of education reform. This evidence includes:

- criticisms by legislators and complaints by members of the public who testified to the Legislature’s Task Force about ineffectiveness, corruption and over-politicization, and the abysmal rate of voter participation in the existing community school board system,
- the announcement and implementation by the Mayor and the Chancellor of the Children First Agenda which emphasizes parent involvement in all aspects of the education system, and
- the support of minority legislators in the New York State Legislature.

With respect to the effect of the change on the position of minority residents within the covered counties, the significant increase in minority percentage among parents, who elect parent association and PTA officers, will have a significantly positive impact on the ability of minority residents to participate and select CDEC members. Based on the change from eligible voters in the community school board system to parents, there is an increase in minority percentage and decrease in white percentage in every community school board district. Seven community school districts that are majority white in eligible voters under the existing system are majority minority in parent population. This increased opportunity also holds true for each of the three minority groups individually. Moreover, Borough Presidents, who also have a role in selecting members of the CDECs, are themselves a racially diverse group, and have historically appointed a racially diverse group of members to the City Board of Education. This is a strong indication that they can be expected to do the same with respect to their appointments under Chapter 123. As we describe in detail in the submission, the proposed change will greatly empower Hispanic, Black and Asian parents in the three covered counties.

We respectfully request that the Department of Justice expedite review of this submission. Section 2590-c(2) of the Education Law, as amended by section 3 of Chapter 123, specifies that the members of the new Community District Education Councils will be selected on or before October 31, 3003, and will take office on December 1, 2003. We are aware that replacement of community school boards cannot take effect until the applicable provisions of law subject to preclearance have been approved under section 5 of the Voting Rights Act. In light of the timeframe for implementing the new governance structure intended by the Legislature, and in view of the importance of the structure in helping to bring parent involvement to the foreground in the pursuit of desperately needed improvements in our public school system, we would appreciate your assistance in completing your review so that the new governance system may be implemented at the earliest possible date consistent with State and federal law.

For further information about the matters discussed herein, please contact one of the following members of my staff:

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Sincerely yours,

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