New York State School Boards Association
Better School Boards Lead to Better Student Performance

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The Honorable Letitia James, Attorney General
Office of the Attorney General
Civil Rights Bureau, Voting Rights Section
28 Liberty Street
New York, NY 10005

Dear Attorney General James,

Please accept the following comments from the New York State School Boards Association related to the proposed regulations for Preclearance pursuant to the New York Voting Rights Act.

The New York Voting Rights Act ensures all voters in New York, even those subject to past marginalization and disenfranchisement, will have equal access to vote. Our organization is supportive of this goal. We have concerns, however, that the preclearance regulations neglect to take into consideration the different election procedures for school board elections set out in the education law. This concern is directed in particular to the language in the portion of the proposed regulations dedicated to preclearance application supplemental materials found in section 501.1(b). Section 501.1(b)(iii) sets out that the Civil Rights Bureau may request election returns including a breakdown of information regarding the number of registered voters, by race, color and language minority group, for each election district for which election returns are furnished. As highlighted below, the authority of school boards to conduct elections presents inherent differences in operations from those under the election law which are not accounted for in the proposed regulatory language.

A school board has no inherent powers and possesses only those powers expressly delegated by statute or necessarily and reasonably implied therefrom (*Appeal of Woodarek*, 46 Ed Dept Rep 1 (2006), *petition dismissed*, (Sup. Ct. Albany Cnty. May 22, 2007); *Appeal of McKenna*, 42 Ed Dept Rep 54 (2002)). There are six basic types of organizational formats for school districts. They include common, union free, central, central high school, small city (under 125,000 inhabitants) and large city (125,000 inhabitants or more). The organizational classification of a school district determines the powers and duties that the school board possesses.

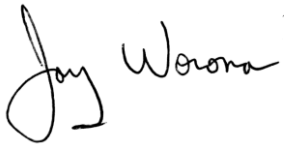
The majority of school district elections are conducted under Articles 41 and 53 of the education law, rather than the election law. A small number of school board elections are conducted by the county board of elections (namely the city school districts of Buffalo, Rochester, Syracuse and Rensselaer). The education law does not require voters to be registered, except in city school districts. The law permits union free and central school districts to adopt a system of personal registration, whereby a voter must be registered with either the county or the school district to be eligible to vote. Common school districts are, however, not granted that same authority. In districts where voters are not required to be registered, on election day a voter may be asked to present proof of residency in a form as determined by the school district.

In school districts with a system of personal registration the school board appoints a board of registration to conduct voter registration at times and locations specified by the school board. Under the education law a qualified voter is a person who is a citizen of the United States, at least age 18, a resident of the school district for at least 30 days prior to the election at which he or she seeks to vote, and who is not otherwise prohibited from voting under the provisions of Section 5-106 of the Election Law. As stated earlier, a person is permitted to vote in a school board election if they are registered with the county or with the school district itself. In preparing the voter registration lists, the school district receives a list of registered voters from the relevant county boards of election (some districts span multiple counties). When registering voters there is no requirement that school districts themselves capture demographic information such as race, color and language minority group. Given that school districts only have the authority granted to them or reasonably implied therefrom, a voter cannot be required to share such information to register to vote. Thus, there is no reliable way to accurately provide such information if requested as supplemental material for a preclearance application. The school districts preliminarily identified as covered entities by the Civil Rights Bureau are either city school districts or have adopted a system of personal registration. Therefore, if they seek to make any changes to a covered policy the Civil Rights Bureau needs an understanding of the scope of information those districts may be expected to provide, since they do not have the ability to require individuals who register directly with the district provide that demographic information. Similarly, if a school district that does not require voters to be registered is identified in the future as a covered entity it will not be able to furnish any voter registration lists, let alone one that identifies the number of registered voters by race, color and language minority group.

Additionally, school districts that do require voters to be registered may set up election districts. However, under the education law, the purpose of election districts is simply to permit a school district to have multiple polling locations. School board seats, with very limited exception, are not tied to the geographic area of an election district. While such districts can, if necessary, provide a breakdown of election results by election district, this information may have limited utility.

Our organization felt it was important to highlight the election procedures in the majority of school districts will not be compatible with the current framework set out in the proposed regulations and as a result the well-intended goal set out in these regulations will be extremely difficult if not impossible to meet. Therefore, our organization is requesting a clarifying change to the regulations recognizing that school districts may not be able to provide such information as supplemental material to an application.

Sincerely,



Jay Worona
General Counsel and Deputy Executive Director