

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

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT:

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CHAPTER 123, LAWS OF 2003 OF THE STATE OF NEW YORK

I INTRODUCTION

II BACKGROUND

A Enactment of Chapter 91

B Task Force on Community School District Governance Reform

C Additional public hearings

D Enactment of Chapter 123

E Adoption of the Chancellor's Regulations

III SUMMARY OF PROVISIONS OF THE EDUCATION LAW UNDER EXISTING LAW AND AS AMENDED BY SECTIONS 7 AND 8 OF CHAPTER 91

A Community School Districts under Existing Law

B Community School Boards under Existing Law

C Sunset of Community School Boards under Chapter 91

IV SUMMARY OF PROVISIONS OF CHAPTER 123

A Composition and qualifications of the local governance bodies

B Powers of the governance bodies

V PARENT ASSOCIATIONS AND PARENT TEACHER ASSOCIATIONS

A Statutory and regulatory provisions

B Plans to strengthen the parent associations and PTAs as part of the new emphasis on empowering parents

- VI REASONS FOR ENACTMENT OF CHAPTERS 91 AND 123
 - A Reasons discussed in floor debates on Chapter 91
 - B Candidate and voter apathy
 - C Issues Presented at Task Force Proceedings
 - D Proposal to the Task Force from Mayor Bloomberg and Chancellor Klein
 - E Task Force Report
 - F Statement by the Senate Sponsor of Chapter 123
- VII CHANCELLOR'S IMPLEMENTING REGULATIONS
 - A Statutory requirements for the regulations
 - B Draft regulations published for comment
 - C Public hearings on the draft regulations
 - D Final regulations
- VIII 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
 - A Purpose
 - B Effect
- IX ADDITIONAL INFORMATION
 - A Press clips
 - B Memorandum in support
 - C Senate floor debate for Chapter 123
 - D Distribution list
- X CONCLUSION

EXHIBITS

Volume 1

- 1 Chapter 91 of the Laws of 2002
- 2 Chapter 123 of the Laws of 2003
- 3 Preclearance submission letter for Chapter 91
- 4 Press release announcing appointments to the Task Force on Community School District Governance Reform

Volume 2

- 5 Transcripts of hearings by the Task Force on Community School District Governance Reform – December 10, 2002

Volume 3

- 6 Transcripts of hearings by the Task Force on Community School District Governance Reform – December 12, 2002

Volume 4

- 7 Transcripts of hearings by the Task Force on Community School District Governance Reform – December 19, 2002

Volume 5

- 8 Written Submissions to the Task Force on Community School District Governance Reform – December 19, 2002

Volume 6

- 9 Transcripts of hearings by the Task Force on Community School District Governance Reform – January 6, 2003

Volume 7

- 10 Transcripts of hearings by the Task Force on Community School District Governance Reform – January 16, 2003 – Day Session

Volume 8

- 11 Transcripts of hearings by the Task Force on Community School District Governance Reform - January 16, 2003 – Evening Session

Volume 9

- 12 Announcements of hearings by the Task Force on Community School District Governance Reform
- 13 Preliminary report by the Task Force on Community School District Governance Reform
- 14 Final report by the Task Force on Community School District Governance Reform

Volume 10

- 15 Transcript of hearing by the Education Committee of the Council of the City of New York

Volume 11

- 16 Transcript of hearing by the Senate Majority Task Force on New York City School Governance

Volume 12

- 17 Roll calls for Chapters 91 and 123
- 18 Section by section analysis of Chapter 91
- 19 Education Law 2590-b and 2590-c, prior to amendment by Chapter 91
- 20 Settlement and stipulation, Kruger v. Bloomberg
- 21 Community school board members elected in 1999
- 22 Maps of community school districts
- 23 Comparison of current law with Chapter 123: Selection and qualification of members
- 24 Comparison of current law with Chapter 123: Powers of community school boards, CDECs and the Citywide Council on Special Education
- 25 Testimony of City Council member Ruben Diaz

Volume 13

- 26 Transcript of Assembly floor debate on Chapter 91

Volume 14

- 27 Transcript of Senate floor debate on Chapter 91

Volume 15

- 28 Candidates in the 1999 community school board elections
29 Voter turnout in the 1999 community school board elections
30 Resolution of community school board 2
31 Governance proposal from members of community school board 22
32 Chancellor's Regulation A-660
33 The Children First Reform Agenda
34 Job Posting: School Based Parent Coordinator

Volume 16

- 35 A Guide for Parents and Families

Volume 17

- 36 Parent Academy Concept Paper
37 Parent Association/Parent Teacher Association Survey
38 Demographics of District 75 students
39 Mayor's speech in honor of Dr. Martin Luther King's birthday
40 Voter turnout for Citywide elections
41 Student Ethnicity by District

Volume 18

- 42 Chancellor's Regulation D-140, as proposed in September 2003
43 Chancellor's Regulation D-150, as proposed in September 2003
44 Chancellor's Regulation C-120
45 Chancellor's Regulation D-130
46 Announcements of public hearings on Chancellor's Regulations

Volume 19

- 47 Transcript of public hearings on Chancellor's Regulations
September 15, 2003

Volume 20

- 48 Transcript of public hearings on Chancellor's Regulations
September 16, 2003

Volume 21

- 49 Transcript of public hearings on Chancellor's Regulations
September 18, 2003

Volume 22

- 50 Transcript of public hearings on Chancellor's Regulations
September 14, 2003

Volume 23

- 51 Transcript of public hearings on Chancellor's Regulations
September 25, 2003

Volume 24

- 52 Written testimony and comments on Chancellor's Regulations

Volume 25

- 53 Chancellor's Regulation D-140 as adopted in October 2003

- 54 Chancellor's Regulation D-150 as adopted in October 2003

- 55 Reserved

Volume 26

- 56 Borough Presidents and their appointments to the City Board of Education

- 57 Press clips

- 58 Memorandum in support for Chapter 123

- 59 Floor debate for Chapter 123

60 Distribution list

Volume 27

61 Resume of Dr. Bernard Grofman

62 Report by Dr. Bernard Grofman

63 Preclearance submission for Chapter 149 of the Laws of 1998

64 Comparison of number of voters participating in 1996 and 1999 elections

Volume 28

65 Resume of John Hull Mollenkopf, Ph.D

66 Report by John Hull Mollenkopf, Ph.D

Volume 29

67 Voting results from the 1999 community school board elections

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

I. INTRODUCTION

Chapter 91 of the Laws of the State of New York for 2002¹ restructured the governance of the City School District by: (1) reconstituting the Board of Education of the City School District (“City Board”)² so that a majority of its members are Mayoral appointees and the remaining members are parents appointed by the Borough Presidents, and all members serve at the pleasure of the appointing authority; (2) empowering the Mayor to appoint the Chancellor, who serves at the Mayor’s pleasure and chairs the City Board; and (3) giving the Chancellor power to appoint superintendents of community school districts. These changes were submitted to the Justice Department for review.³ The Justice Department determined that they were not subject to section 5 of the Voting Rights Act.

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.”⁴

Chapter 123 of the Laws of 2003,⁵ based largely upon the Task Force’s recommendations, provides for the creation of a “Community District Education Council” (“CDEC”) for each community school district, to take the place of the community school boards. The new CDECs will each 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 Chancellor is

¹ A copy of Chapter 91 is attached hereto as Exhibit 1.

² The City Board is also known as the “Panel for Educational Policy.” See Bylaws of the Panel for Educational Policy, p. 1, at <http://www.nycenet.edu/panelfored/bylaws.pdf>.

³ A copy of the submission letter for Chapter 91 (without attachments) is attached hereto as Exhibit 3.

⁴ The Task Force and its work are discussed in Parts II and VI below.

⁵ A copy of Chapter 123 was sent to your office on September 2. Another copy is attached hereto as Exhibit 2.

delegated the responsibility to issue regulations establishing the procedure whereby officers of parent associations and parent teacher associations will select the parent members.

In addition, based also upon the Task Force's recommendations, Chapter 123 provides for the creation of a "Citywide Council on Special Education," which will consist of 9 members who are parents of children attending public schools and receiving special education services, 2 members appointed by the Public Advocate, and a non-voting public high school student receiving such services. The Chancellor is delegated the responsibility to design a "representative process" for the selection of the parent members of this body.

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, as discussed in Part VIII of this submission, 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.

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 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 casting votes) and the public. 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 any Community School District office or Learning Support Center on a specific date(s) to be published by the Office of Community School District Affairs, or mail their ballots to the Office of Community School District Affairs.

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, 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 for the CDECs and the Citywide Council on Special Education establish a schedule for the conduct of the initial elections for parent members to the end that the voting will have been completed by the 90th day after the Department of Justice has made a preclearance determination. The first thirty days following that determination would be used to conduct a publicity campaign about the new system, and for candidates to nominate themselves and submit their applications. The next five days (days 31 – 35) would be used to certify a list of candidates for each district, and the next fifteen days after that (days 36 – 50) would be used to conduct a candidate forum in each district, and a forum for the candidates for the Citywide Council on Special Education. A thirty day period following these events (days 51 – 80) will be allowed for parents and the public to give their opinions about the candidates to the parent association and PTA officers who will be voting; parent associations and PTAs will be strongly encouraged to conduct meetings during this period for the purpose of discussing the candidates. Balloting will occur during the last ten days (days 81 – 90).⁶

II. BACKGROUND

A. Enactment of Chapter 91

The process leading up to the enactment of Chapter 91 was described in detail in our submission dated June 17, 2002. A copy of that submission letter is attached hereto as Exhibit 3.

The legislation received overwhelming support in the State Legislature: the Assembly passed it on June 10, 2002 by a vote of 139 to 5, and the Senate passed it the following day by a vote of 55 to 3. As shown by the roll calls provided in Exhibit 3, nearly all the minority members and nearly all the members of the City's delegations of both houses voted in favor of the new legislation. As they cast their votes, a number of legislators condemned the community school boards for their record of corruption, favoritism, over-politicization, and failure to meet the needs of our students. Their statements are discussed in Part VI A of this submission.

Governor Pataki signed Chapter 91 on June 12, 2002.

B. Task Force on Community School District Governance Reform

Section 24 of Chapter 91 called for the establishment of a "Task Force on Community School District Governance Reform," to consist of 20 members, with the Temporary President of

⁶ The final regulations are attached as Exhibits 53 and 54 and are discussed in Part VII D of this submission.

the Senate and the Speaker of the Assembly each appointing a co-chair and 9 other members. The Speaker and Temporary President were to ensure that they appointed City residents “representative and reflective of the communities of the City of New York.” The law charged the Task Force to develop a proposal and make recommendations “regarding the community school boards and their powers and duties.”

The appointment of the Task Force members was announced on October 31, 2002. The Senate’s 10 appointments to the Task Force were:

- Terri Thompson, Queens – Co-chair of the Task Force, Former member of the New York City Board of Education, Citibank executive and Queens civic leader.
- Penelope Kreutzer, Manhattan – An instructor at State University of New York - Purchase and Vassar College.
- Renee C. Hill, Bronx – A criminal defense attorney and Court TV commentator; former member of Community School Board 10.
- James P. Sullivan, Bronx – A longtime educator and administrator in the New York City School system and former New York City police officer.
- Jack Friedman, Queens – Former President of Community School Board 26, Special Educational Advisor to New York City Councilman David Weprin.
- Yanghee Hahn, Queens – Executive Vice President of the Korean Association of Flushing and member of the New York City Commission on Human Rights.
- Cassandra Mullen, Queens – Attorney specializing in insurance litigation.
- C. Bunny Reddington, Staten Island – Director of the International Patient Program at Staten Island University Hospital and Vice Chair of Community School Board 31.
- Robert deLeon, Manhattan – Executive Director of VIDA Family Services, an outpatient substance abuse treatment facility.
- Gerald Levin, Manhattan – Former Chairman and CEO of Time Warner Inc.

The Assembly’s 10 appointments to the Task Force were:

- Assemblyman Steve Sanders, Manhattan – Co-chair of the Task Force, Chair of the Assembly Education Committee and a member of Assemblyman Silver’s (the Speaker’s) school governance advisory group.
- Assemblyman Roger Green, Brooklyn – Chair of the Assembly Committee on Children and Families and member of the Speaker’s school governance advisory group.
- Assemblyman John Lavelle, Staten Island – Member of the Speaker’s school governance advisory group.

- Assemblywoman Audrey Pheffer, Queens – Member of the Speaker’s school governance advisory group.
- Assemblyman Peter Rivera, Bronx – Chair of the Puerto Rican/Hispanic Task Force and member of the Speaker’s school governance advisory group.
- Ernest Clayton, Manhattan – President of the United Parents Association.
- Virginia Kee, Manhattan – Founder of the Chinese American Planning Council.
- Jane Arce-Bello, Bronx – Parent advocate and former executive director of the Association of Hispanic Arts.
- Robin Brown, Brooklyn – President of the Chancellor’s Parent Advisory Council.
- Kathryn Wylde, Brooklyn – President and CEO of the New York City Partnership.

Among these 20 members are 4 African Americans (Ms. Brown, Mr. Clayton, Mr. Green, Ms. Hill), 3 Hispanics (Ms. Arce-Bello, Mr. deLeon, Mr. Rivera), 2 Asians (Ms. Hahn, Ms. Kee), and 11 Caucasians (Mr. Sanders, Ms. Thomson, Mr. Friedman, Ms. Kreitzer, Mr. LaVelle, Mr. Levin, Ms. McKenna, Ms. Mullen, Ms. Pheffer, Ms. Reddington, Ms. Wylde). A copy of the press release announcing their appointments is attached as Exhibit 4.

Section 24 of Chapter 91 required the Task Force to hold at least one public hearing in each of the City’s five boroughs. These hearings were conducted between December 10, 2002 and January 16, 2003. Copies of the hearing transcripts are attached hereto as Exhibits 5 through 11. Copies of the announcements inviting the public to attend are attached hereto as Exhibit 12. The Task Force issued a Preliminary Report on December 15, 2002 and a Final Report on February 15, 2003. Copies of these reports are attached as Exhibits 13 and 14, respectively.

C. Additional public hearings

The Education Committee of the Council of the City of New York also conducted hearings on school governance in December 2002 and January 2003. Transcripts of these hearings are attached hereto as Exhibit 15. The Education Committee adopted a proposal (included in Exhibit 15) which was later presented to the Task Force on Community School District Governance Reform. It called for the establishment of “Parent and Community School Councils” for each community school district. Under the Education Committee proposal, each council would have 5 members appointed by members of the City Council and 4 members appointed by Borough Presidents. The majority of members would be required to be parents of students currently attending public schools.

In addition, the Senate Majority Task Force on New York City School Governance held a public hearing on April 4, 2003, after the Joint Task Force had issued its final report. A transcript of this hearing is attached as Exhibit 16.⁷

D. Enactment of Chapter 123

The bill which became Chapter 123 was introduced in both houses of the Legislature on June 19, 2003 (S 5688/A 9113). It passed the Senate on the same date by a vote of 61 to 0, with one member excused. It passed the Assembly on June 20 by a vote of 117 to 27, with one member absent and five excused. A record of the roll call, showing demographic information, is attached as Exhibit 17. As demonstrated by the data in Exhibit 17, there was overwhelming support for the legislation among the minority members of both houses. The 6 African American Senators from the City, the 4 Hispanic Senators from the City, and the one African American Senator from outside the City all voted in favor, as did 15 African American and 8 Hispanic members of the Assembly from districts in the City, 4 African American members and 1 Hispanic member from outside the City. Only one African American member of the Assembly (a representative from Queens, not a county covered by section 5 of the Voting Rights Act) voted against the bill. 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.

Governor Pataki signed Chapter 123 on July 9, 2003.

E. Adoption of the Chancellor’s Regulations

The Chancellor’s office began immediately to draft rules creating processes for selecting parents to serve on the Community District Education Councils and the Citywide Council on Special Education. Public hearings on the proposed regulations (attached hereto as Exhibits 47-52) were conducted in each borough between September 15 and September 25, 2003.

The Chancellor’s office took numerous steps to disseminate information about the proposed regulations and the public hearings to reach the broadest parent population and other interested community members. It developed a “parent-friendly” summary of the proposed

⁷Although the Joint Task Force hearing was held to solicit input from the public on creating a new local governance structure, much of the testimony focused on criticizing the Chancellor on an unrelated topic, his appointment of Regional Superintendents to head the ten instructional regions that were created through the Children First reorganization, discussed at Part III A below. Litigation over the reorganization was pending at the time of the hearings and was settled prior to the enactment of Chapter 123 pursuant to a stipulation also described in Part III A. It should be noted that all of the Senators on the Majority Task Force – including those involved as plaintiffs in the litigation – ultimately voted in favor of Chapter 123.

regulations on the nomination and selection of parent and student members to serve on the new Community District Education Councils and the Citywide Council on Special Education. This summary and a flyer with the dates of the public hearings and information about how to obtain complete copies of the draft regulations were distributed by mail or e-mail to: principals; presidents of parent associations and PTAs; members of the Chancellor's Parent Advisory Council (comprised of parent leaders within each community school district); the heads of thousands of community-based and faith-based organizations citywide; state and local elected officials; and members of the community school boards. To reach non-English speaking parents and to increase their participation in this important process, the Chancellor's office translated the summary and flyer into the eight most common languages spoken by New York City parents. It also advertised the hearings in numerous community and ethnic newspapers. Copies of announcements inviting the public to attend hearings on the proposed regulations and a distribution list are attached hereto as Exhibit 46. The summary, with links to the proposed regulations and translations, was published on the Internet.⁸

The Chancellor's staff reviewed the public comments and consulted with Dr. John Mollenkopf, an expert in the statistical analysis of census data, and Dr. Bernard Grofman, an expert on voting rights and redistricting, about possible voting schemes and their impact on minority voting strength. Based on the public comment and expert advice, the Chancellor revised the rules and adopted them in final form on October 31, 2003.⁹

III. SUMMARY OF PROVISIONS OF THE EDUCATION LAW UNDER EXISTING LAW AND AS AMENDED BY SECTIONS 7 AND 8 OF CHAPTER 91

A copy of Chapter 91 is attached to this letter as Exhibit 1. Many of the provisions of Chapter 91 were submitted for review by letter dated July 17, 2002, attached hereto as Exhibit 3. A section-by-section explanation of Chapter 91, previously submitted with the July 17 letter, is attached hereto as Exhibit 18. Copies of Education Law 2590-b(2)(a) and 2590-c, which are repealed by the sections of Chapter 91 submitted herewith for preclearance, are attached as Exhibit 19.

Note that pursuant to section 24 of Chapter 91, sections 7 and 8 (and other provisions) of Chapter 91 will sunset on June 30, 2009.

⁸ <http://www.nycenet.edu/NR/exeres/73E9E3BC-A90D-4D3C-B5AD-50D8C938C03D.htm>

⁹ The final rules are attached hereto as Exhibits 53 and 54 and are discussed in Part VII of this submission.

A. Community School Districts under Existing Law

The City School District is currently divided into 32 community school districts,¹⁰ each of which has an elected community school board with certain responsibilities concerning education within their district, primarily with regard to elementary and middle schools.¹¹ The Chancellor selects a community superintendent for each district. Educ. L. §2590-h(30).

In January 2003, Mayor Bloomberg and Chancellor Klein announced plans for organizing all schools in the City's public school system (including those in the 32 community school districts) into 10 instructional "regions," each headed by a "regional superintendent." Litigation challenging these plans was filed by several members of the Legislature in February of 2003. The case was settled by a stipulation and order entered June 10, 2003, a copy of which is attached hereto as Exhibit 20. The settlement did not substantially impact the Chancellor's reorganization plans and reaffirmed the Chancellor's intention to appoint one community superintendent for each community school district to exercise the statutory powers and duties of that position. Stipulation item 2. The parties acknowledged that the reorganization and the regional structure "are not, and do not purport to be, an attempt to redraw current school district boundaries. To the extent that any grouping (networks) of schools is done by the Chancellor ..., such crossing of community school district lines is strictly for educational purposes and such grouping is not intended to, nor will it, dispense with community school districts as they currently exist." Stipulation item 5.

B. Community School Boards under Existing Law

Each community school board has nine members who are elected for terms of three years and serve without compensation. Education Law §2590-c(1).¹² The elections are conducted by the Board of Elections of the City of New York in May, using a system of proportional representation in accordance with rules set forth in Education Law §2590-c(7).

¹⁰ Education Law §2590-b(2)(b) provides that there shall be no less than 30 and no more than 37 community school districts. The City Board is authorized to readjust or alter the districts once every ten years, commencing in 2004. The City Board is also authorized to make "minor adjustments, (i) to correct errors that may occur in the district lines adopted by the City Board, or (ii) upon showing a change in circumstances." Such minor adjustments may be made prior to 2004. Education Law §2590-b(3)(f).

¹¹ Jurisdiction over high schools, other than certain special academic and vocational schools, may be transferred to a community school board upon the consent of the Chancellor and the community superintendent. Education Law §2590-i (3).

¹² An exhibit showing the community board members elected in 1999 is attached hereto as Exhibit 21. Maps of the current districts are provided in Exhibit 22.

The electorate for community school boards includes not only registered voters eligible to vote in other types of elections, but also persons registered as “parent voters.” The City Board of Education is required to provide written notice to parents about their right to vote in the elections, and the method and time for registration. It must provide forms for registration by mail. Education Law §2590-c (3)(b). The City Board and the Board of Elections of the City of New York are to provide for registration of parent voters, and cancellation of registration when the parent no longer has a child attending a school under the jurisdiction of the community school board. Education Law §2590-c(3)(a).

Pursuant to Education Law §2590-l(1)(a), the Chancellor may supersede a community school board, or suspend or remove a community school board or a member or members thereof, for “fail[ure] to comply with any applicable provisions of law, by-laws, rules or regulations, standards, directives and agreements.” A member may also be removed “upon a finding that the member willfully, intentionally or knowingly interfered with or was involved in the hiring, appointment or assignment of employees other than as specifically authorized in [the Education Law].” §2590-l(2-a). The Chancellor must first provide an opportunity for conciliation, except “where the conduct (i) is criminal in nature; (ii) poses an immediate danger to the safety or welfare of students or any school staff or employee, or (iii) in the judgment of the chancellor, is contrary to the best interest of the city school district.” Education Law §2590-l(1)(b). These provisions were enacted as Chapters 45, 46, and 720 of the Laws of 1996 and were precleared.

Education Law §§ 2590-g(3) and 2590-l(2) provide for the City Board to act as an appeal board when the Chancellor has exercised the authority under § 2590-l (described above) to supersede a community school board, or suspend or remove a community school board or a member or members thereof.

C. Sunset of Community School Boards under Chapter 91

Sections 7 and 8 of Chapter 91 repeal Education Law §2590-b (2)(a), which provides for the community school boards, and §2590-c, which provides for the election of such boards. The effective date provisions of section 34 of Chapter 91 provided for these repeals to take effect on June 30, 2003. The effective date provision of Chapter 91 was amended by Chapter 6 of the Laws of 2003, which has been precleared. Section 3 of Chapter 6 provided that sections 7 and 8 of Chapter 91 would not take effect until June 30, 2004. Section 3 of Chapter 6 was repealed by Chapter 15 of the Laws of 2003, which was submitted to the Justice Department for information purposes while the preclearance decision for Chapter 6 was pending. Essentially, the enactment of Chapter 15 restored the repeal provisions as they had been enacted by Chapter 91.

As a result of these several enactments, the Education Law currently provides for the sunset of the community school boards and the election provisions to take effect on June 30, 2003. This date had already passed prior to the enactment of Chapter 123 (on July 9, 2003), which provides for bodies to replace the community school boards. However, as required by the Voting Rights Act, the community school board and election sunset provisions of Chapter 91 have not been implemented and will not be until the Justice Department has made its determination under section 5 of that Act. Our June 2002 preclearance submission for Chapter

91 indicated that we anticipated submitting these provisions for preclearance, as we are doing now, after the Task Force had made its recommendations and the Legislature had enacted further legislation.

IV. SUMMARY OF PROVISIONS OF CHAPTER 123

A copy of Chapter 123 is attached hereto as Exhibit 2. A chart comparing the provisions of existing law concerning the election of Community School Board members, their qualifications, and term of office with comparable provisions regarding Community District Education Councils and the Citywide Council on Special Education is attached hereto as Exhibit 23. Another chart comparing the powers of these bodies is attached hereto as Exhibit 24.

Note that section 17 of Chapter 123 has a sunset date that coincides with the sunset provisions of Chapter 91.

A. Composition and qualifications of the local governance bodies

The composition of community school boards and their election process have been described above in Part III. Under existing law, there is no requirement that community school board members be parents of children in public school. In contrast, under the new scheme established by Chapter 123, parents will hold a strong majority of seats in the new local governance bodies. This feature of the Community District Education Councils and the Citywide Council on Special Education responds to demands voiced by many speakers at the Task Force hearings, as described in Part VI C of this submission. As described in Part VI B of this submission, empowerment of parents via the new councils will complement and be complemented by the Mayor's and Chancellor's strong emphasis on parent involvement in the schools.

Nine of the twelve members of the CDECs must be parents of children attending schools under the jurisdiction of the community school district. Educ. L. §2590-c(1)(a). They are to be selected by the presidents and officers of the parent associations ("PAs") or parent teacher associations ("PTAs") within the district, in accordance with a procedure determined by the Chancellor.¹³ Educ. L. §§2590-c(1)(a), 2590-c(8). The Chancellor is to develop a process to ensure a uniform election process for the PAs and PTAs which provides for uniformity with respect to timing of elections and the structure and size of the bodies. Educ. L. §2590-c(8)(a). The Chancellor is also to develop selection procedures for CDEC members "which shall attempt

¹³ Parent associations and parent teacher associations are established pursuant to Chancellor's Regulation A-660, attached hereto as Exhibit 37. The regulation may also be found at <http://docs.nycenet.edu/dscgi/admin.py/Get/File-459/A-660.pdf>. Information about these associations is provided below at Part V.

to ensure membership that reflects a representative cross-section of the communities within the school district and diversity of the student population including those with particular educational needs, shall include consideration of the enrollment figures within each community school district and the potential disparity of such enrollment from school to school within the district, and shall ensure that, to the extent possible, a school may have no more than one parent representative on the community council.” Educ. L. §2590-c(8)(c).¹⁴

Each CDEC will have two additional members appointed by the Borough President of the borough where the district is located. These members need not be parents of children attending public schools, but must be “residents of, or own or operate a business in, the district and shall be individuals with extensive business, trade, or education experience and knowledge, who will make a significant contribution to improving education in the district.” Educ. L. §2590-c(1)(b). There will also be a non-voting member of each CDEC who is a high school senior residing in the district, “appointed by the superintendent from among the elected student leadership.” Educ. L. §2590-c(1)(c).

In addition to the CDECs, Chapter 123 creates a new body to be known as the Citywide Council on Special Education. Educ. L. §2590-b(4). This entity will also have a strong majority of parent members, with nine parent members, two members appointed by the Public Advocate,¹⁵ and one non-voting high school student member. Each parent member must have a child who receives special education services. Educ. L. §2590-b(4)(a)(1). The Public Advocate’s appointees must be “individuals with extensive experience and knowledge in the areas of educating, training or employing individuals with handicapping conditions” who “will make a significant contribution to improving special education in the city district.” Educ. L. §2590-b(4)(a)(2). The high school student will be appointed by the administrator designated by the Chancellor to supervise citywide special education programs. Educ. L. §2590-b(4)(a)(3). Chapter 123 delegates to the Chancellor the authority to develop a selection process for parent members of the Council.¹⁶

¹⁴ Chancellor’s Regulation D-140, which implements these requirements of Chapter 123, is discussed below at Part VII.

¹⁵ The Public Advocate is elected by citywide election, at the same time as the Mayor and the Council. Among other duties, the Public Advocate receives and investigates complaints about city services and other administrative actions of city agencies. New York City Charter §24.

¹⁶ Chancellor’s Regulation D-150, which implements these requirements of Chapter 123, is discussed below at Part VII.