U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 19, 1993

Dr. Ronald G. Claunch
Dr. Leon C. Hallman
Box 13045 SFA Station
Stephen F. Austin State University
Nacogdoches, Texas 75962

Dear Drs. Claunch and Hallman:

This refers to the change in the method of electing trustees from seven at large to five single-member districts and two elected at large; the districting plan; the provision that the two at-large seats will be elected on a staggered basis; the implementation schedule; the realignment, renumbering, and elimination of voting precincts; the designation of three new polling places and two polling place changes; and the new location for absentee voting for the Atlanta Independent School District in Cass County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on November 12 and December 21, 1992; supplemental information was received on December 9 and 14, 1992.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to 1990 Census data, the Atlanta Independent School District has a total population of 10,651 of whom 23.3 percent are black. The school board is comprised of seven members elected at large by plurality vote to three-year, staggered terms.

The school board began its consideration of changing its at-large system after concerns were raised by the black community that at-large elections unfairly limited opportunities for black voters to elect candidates of choice to the school board. From the outset of the process, the board only considered alternative election plans that retained the at-large seats, despite the fact that black candidates had been unable in the past to gain

election to the board under the at-large system and the representations of minorities that this pattern of electoral results would likely continue in the future. Ultimately, black voters filed a lawsuit under Section 2 of the Voting Rights Act challenging the at-large method of election.

We have reviewed the school board's contention that black voters will be able to elect candidates of their choice to the at-large seats in light of the history of racial discrimination in the county, disparities that exist in the socio-economic conditions of black and white citizens, and election results over the past decade. Our analysis of election contests involving voters within the school district suggests the existence of a pattern of racially polarized voting within the school district, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black majorities. Indeed, despite the apparent support of black voters, no black candidate has ever been elected to the school board under the at-large election system. There is little reason to believe that black voters will have any greater opportunity to elect their candidates of choice to the at-large seats under the proposed plan than is available to them under the present plan.

The board also contends that it did not consider other electoral schemes that contain fewer at-large seats because the demographers retained by the board believed that it was not possible to draw more than one majority black district under any such options available, i.e., under a 5-2, 6-1 or a 7-0 election scheme. But the information provided to us indicates that the board favored retaining two at-large seats prior to the time that the demographers were actually retained. The board never appears to have deviated from its preference for the two at-large seats, except when it voted in December 1991 in favor of retaining the at-large election scheme for all seven trustee seats. Prior to the adoption of the instant plan in May 1992, the board did not request and the demographers did not devise a districting plan for more than five single-member districts. Our analysis of the demographics of the school district, and the data you provided for Census blocks split by school district boundaries, suggests that the feasibility of drawing two majority black single-member districts under a 7-0 plan was readily discernible.

Finally, it appears that the protection of the interests of incumbents played a significant role in the school district's decision. Our review of the information you provided suggests

that at-large seats were retained and their election schedule staggered in order to permit incumbents to run for re-election without requiring that they compete against one another. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents appears to have been provided at the expense of black voters, the school board bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in the method of election for the school district.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the county council and school board redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With respect to the remaining changes, we understand that those changes are dependent on the method of election change. In view of the objection interposed herein to the change in method of election, the Attorney General will make no determination with regard to those matters. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Atlanta Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division