January 8, 2010

State Board Office
New Jersey Department of Education
River View Executive Plaza
Building 100
P.O. Box 500
Trenton, NJ 08625-0500

Re:  Petition for Rulemaking –
New Jersey High School Voter Registration Law

Dear Members of the State Board of Education:

Pursuant to N.J.A.C. § 6A:6-4.1, the Department of the Public Advocate (“Department”) and co-petitioners Project Vote, the American Civil Liberties Union of New Jersey (“ACLU-NJ”) and the Fair Elections Legal Network (FELN) (collectively, the “Petitioners”) hereby petition for regulations implementing New Jersey’s high school voter registration law, N.J.S.A. 18A:36-27 and -28 (“HSVRL”).

1. Name, address, and phone number of the Petitioners.

The Petitioners for this new rule and rule amendments are the following:

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<tr>
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<td>Attn.: Yolanda Sheffield, Esq., Director of Election Administration</td>
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<tr>
<td>240 West State Street</td>
<td>739 8th Street S.E.</td>
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<td>P.O. Box 851</td>
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<tr>
<td>Trenton, New Jersey 08625</td>
<td>Washington, DC 20003</td>
</tr>
<tr>
<td>609/826-5090</td>
<td>800/546-8683, ext. 302</td>
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2. The substance of the rulemaking request.

The Petitioners request that the Commissioner of Education and the State Board of Education adopt the new rules and amended rule annexed to this petition. The proposed regulations lay out in two subchapters (one for public schools and one for private schools) a mandate to give all eligible students (1) a voter registration form along with necessary time and information to complete it; and (2) education about the importance of voting and the role of a citizen. The regulations would also require schools to report on their compliance with these mandates, through the Quality Single Accountability Continuum (“QSAC”) process if the school is subject to QSAC, and through other reporting means for schools not subject to QSAC. In keeping with New Jersey’s historical respect for local schools’ discretion in curriculum, the regulations lay out the mandatory minimum components of the voter registration and education efforts, while providing schools the opportunity to conduct these activities at a time and with specific content that is most appropriate for their student body.

3. The reasons for the request and the Petitioners’ interest in the request.

Seeking to promote voting among students and youths, the New Jersey Legislature passed the HSVRL in 1985. The law requires that public as well as nonpublic schools offer eligible students two crucial services: (1) voter registration materials and an opportunity to register to vote; and (2) instruction about “the role of a citizen and the importance of voting.” N.J.S.A. § 18A:36-28 requires the Commissioner of Education to “adopt . . . rules and regulations necessary to implement” the law, but no such regulations have been adopted to date.

In February 2007, the Public Advocate began research into the issue of high school voting and registration. Due in part to the absence of these regulations, we found evidence that some 40 to 60 percent of high schools were not in compliance with the twin mandates of the HSVRL. The research supporting this conclusion is laid out in greater detail in the “Summary” document that is annexed.

Other research, more fully laid out in the Summary document, shows that students and youths tend to register and vote at rates that are substantially lower than their older counterparts, and that registration efforts directed at students through high schools can be expected to reduce this participation gap. Ideally, registration and associated instruction about the importance of voting would be provided during a history or other social studies class that all students must take. However, virtually all New Jersey students have completed their required two years of U.S. history courses by their junior year, and no specific social studies courses are required for all seniors. We estimate that upwards of 90 percent of students turn 18 during their senior year. Because New Jersey law allows an underage person to register to vote only if he or she will be 18 by the next election, the voter registration opportunity and related instruction will have to be provided for most students during their senior year.
Petitioners seek adoption of the annexed regulations to effectuate the Legislature’s intent to engage students in the democratic process. The proposed regulations are intended to supplement rather than replace the statutory requirements pertaining to voting in history courses. (N.J.S.A. 18A:35-1 and -2) and the requirements pertaining to voting found in the social studies core curriculum content standards (http://www.state.nj.us/education/cccs/2009/std6_ss.doc).

Since it was reconstituted in 2006, Petitioner Department of the Public Advocate has maintained a Voting Rights Project, which seeks to protect the basic fundamental right to vote belonging to every U.S. citizen. A key component of this project is to ensure that every eligible person is registered to vote, can cast a ballot, and have that ballot fairly counted. We have specifically addressed the issue of HSVRL compliance in New Jersey by, among other things, submitting written testimony to the Legislature and assisting the Commissioner of Education to educate administrators about the law’s requirements and best practices that can help implement the requirement.

Petitioner ACLU-NJ works to defend liberty and individual rights throughout New Jersey. It is involved in litigation and advocacy on behalf of individuals, and it takes positions on important matters of public policy. Among other things, it has issued comprehensive reports on the state of voting rights and election administration in New Jersey, including one on the 2008 general election. Efforts to engage students and youths in electoral participation and in knowing their rights have been a key component of the ACLU-NJ’s work.

Petitioner Project Vote is a national nonpartisan, nonprofit that works to empower, educate, and mobilize marginalized and under-represented voters, including students and youths. It has determined that the nonparticipation of such voters, including young voters, weakens our democracy by excluding from major public policy decisions the voices of the most vulnerable and least powerful. Project Vote has developed voter registration and get-out-the-vote efforts and has achieved a nationwide presence through long-term relationships with service and advocacy partners. It takes a leadership role in nationwide election administration issues, working through research, legal services, and advocacy to ensure that all eligible persons can register and vote.

Petitioner Fair Elections Legal Network (FELN) is a national, nonpartisan network of experienced private and organizational election lawyers who are involved in removing impediments to voter participation by traditionally under-represented constituents, including students. Because of the combination of private, nonpartisan, and advocacy group attorneys that participate in its activities, FELN is uniquely positioned to provide an important service to voter mobilization and participation organizations while avoiding the duplication of resources. FELN has placed specific emphasis upon ensuring that the number of students who register to vote is maximized. Along these lines, FELN supports federal legislation that would designate colleges and universities that receive federal funding as voter registration agencies under the National Voter Registration Act. FELN has also worked to ensure that students who wish to register to vote in their college community are properly educated on how to do so.

Petitioners are aware that the Department of Education (“DOE”) has proposed to add a QSAC indicator to make schools accountable for compliance with the HSVRL. 41 N.J.R. 3491 (Oct. 5, 2009). (This petition recommends changes to the QSAC proposal that are substantially similar to those the Public Advocate suggested in comments on that proposal, submitted to DOE on October 8, 2008.) In addition, DOE recently revised its social studies core curriculum standards to include a requirement that high school students learn to describe the effect of a school-based voter
registration program on youth voting rates. (See http://www.state.nj.us/education/cccs/2009/std6 ss.doc, § 6.1.12.A.14.g). However, Petitioners do not believe that these measures represent a complete solution to HSVRL noncompliance.

Specifically, neither the QSAC proposal nor the recently revised curriculum standards provide guidance to schools on the substantive content of a voter registration drive or require schools to conduct such a drive at the time fixed by the Legislature (near the students’ eighteenth birthdays). Moreover, the QSAC regulations do not reach private schools, or some special public schools that are not subject to QSAC accountability regulations. And the curriculum standards do not demand broader instruction on “the role of a citizen and the importance of voting,” as required by the HSVRL.

4. References to the authority of the agency to take the requested action.

Pursuant to N.J.S.A. 18A:36-28, “[t]he Commissioner of Education shall adopt pursuant to the 'Administrative Procedure Act,' P.L. 1968, c. 410 (C. 52:14B-1 et seq.) rules and regulations necessary to implement the provisions of” the HSVRL. Such a “grant of authority to an administrative agency is to be liberally construed in order to enable the agency to accomplish its statutory responsibilities and ... courts should readily imply such incidental powers as are necessary to effectuate fully the legislative intent.” N.J. State League of Municipalities v. Dep’t of Cnty. Affairs, 158 N.J. 211, 223 (1999) (citations omitted).

CONCLUSION

For these reasons, Petitioners respectfully request that the Commissioner of Education and the State Board of Education adopt the annexed rules.

Respectfully submitted,

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High School Voter Registration and Education Program

SUMMARY

New Jersey requires its schools to play an integral role in preparing students to become informed citizens who participate in the democratic process. Toward this end, a 1985 law requires both public and nonpublic schools to provide voter registration forms and related materials to every eligible student. N.J.S.A. 18A:36-27. Under this law, approximately 100,000 students are entitled to a voter registration opportunity and voter education materials during an annual voter registration and education program at their schools.

In an effort to assist educators with providing the requisite services, and thereby fight the historically low registration and voter participation rates among young people, these proposed rules would set forth how school administrators (including those responsible for State-operated educational programs) must comply with their obligations and report on their compliance.

Numerous studies show that young people register to vote and cast ballots at rates far lower than the population as a whole. For example, U.S. Census data show that in the 2000 presidential election, only 46 percent of New Jerseyans aged 18 to 24 were registered to vote, compared to 63 percent of all New Jerseyans who were registered. Likewise, only 32 percent of New Jerseyans aged 18 to 24 actually cast ballots, compared to 55 percent of all New Jerseyans who cast ballots. These figures were in line with national trends.

Again in the 2004 presidential election, U.S. Census data show that only 52 percent of New Jerseyans aged 18 to 24 were registered to vote, compared to 64 percent of all New Jerseyans who were registered. And only 43 percent of New Jerseyans aged 18 to 24 actually cast ballots, compared to 58 percent of all New Jerseyans who cast ballots. These figures, too, were in line with national trends.

The 2008 presidential election saw little change in the disparities between youth and older citizens’ voting rates that were observed in 2004: in the 2008 race, only 48.5% of citizens aged 18-24 cast ballots, compared to 63.6% of the population at large. The 2008 numbers were slightly better in New Jersey (52.5% vs. 64.1%), but there remains room for improvement here.

Schools can play an important role in helping young people overcome barriers to participation in the electoral process. The Center for Information & Research on Civic Learning & Engagement (CIRCLE) has identified failure to meet the registration deadline and failure to know where or how to register as two barriers that affected young people at a higher rate than the rest of the voting population during the 2004 Presidential election. (Twenty-two percent of young people, aged 18-29, failed to meet the registration deadlines, compared to 14 percent of their older counterparts, aged 30+.) By requiring educators to offer a meaningful registration opportunity and to teach about how, when and where to register to vote and cast a ballot, the voter registration and education program set forth in this rule proposal is designed to remove some of these barriers.
Under these proposed rules, educators will receive detailed guidance on how to conduct the legally required registration and education efforts.

All students, 17 or older, will receive at least once annually a voter registration application and opportunity to register to vote. When receiving the voter registration opportunity, students will have adequate time and information to complete the form and will be specifically advised to carefully review all of the eligibility requirements and ensure that they meet them, and a teacher or other staffer responsible for interacting with students will be available to assist or answer questions about properly completing the form. Students will also learn that the decision to register or not is a free choice for which they cannot be rewarded or penalized. This will ensure that educators provide all the key information students need to make an informed decision on whether to register, while ensuring that the student, and not a school official, is responsible and accountable for attesting to his or her qualifications. Likewise, schools must offer to collect and transmit the voter forms to election officials, but students retain the option to return the form themselves.

In addition, all students 17 or older will receive an annual voter education program. The proposed rules specify the materials for distribution including a summary of voter registration eligibility requirements; information on the role of a citizen and the importance of voting; and instruction on when, where and how to cast a ballot. The rules also suggest other content for an effective voter education program. Of course, this is not the only point in their education that students should receive instruction on voting and civics, and the regulations make clear that the annual voter education program supplements, but does not replace, other content relating to history, civics, and voting, that must be taught in other classes such as the two-year course in U.S. History (cf. N.J.S.A. 18A:35-1 and -2), or that the Social Studies Core Curriculum requires. Nevertheless, to preserve maximum flexibility, the regulations provide that so long as the school offers this educational information at some point between grades 9-12, they need not repeat it during the annual voter registration efforts, which will always be required regardless of other curriculum components. Given the demonstrated effects of giving students instruction in civics and American government – such students are more likely to believe they are personally responsible for making things better in society and 2 to 3 times more likely to engage in civic activities – schools are encouraged to repeat and reinforce such lessons even beyond what is required by the high school voter registration law, or other mandates on civics and government educational content.

The proposed rules also set forth reporting requirements. Among other things, these reporting requirements should help control the rates of noncompliance with the existing law. A 2007 study conducted by the Department of the Public Advocate (DPA), and an earlier report of the New Jersey Center for Civic & Law-Related Education and the Eagleton Institute of Politics, revealed an alarmingly low rate of compliance with the existing high school voter registration and education law: anywhere from 40 to 60 percent of all New Jersey school districts fail to comply with the law’s twin mandates to provide a voter registration opportunity and related educational materials. Greater compliance would yield greater youth registration and hence higher youth turnout on Election Day. For schools already subject to the Quality Single Accountability Continuum (QSAC) reporting requirements, reporting about compliance with this law will be integrated into the QSAC report. Schools that are not subject to QSAC (including nonpublic schools) will file a short annual report with the State demonstrating compliance with the law.
In accordance with N.J.S.A. 18:36-28, which requires the Commissioner of Education to issue rules to implement the requirements of the high school voter registration and education law, Subchapter 1 details the substantive and reporting requirements applicable to schools operated by a district board of education as defined therein, including charter schools and state-operated education programs. Subchapter 2 sets forth like requirements applicable to nonpublic schools. Taken together, these rules supply a heretofore missing mechanism that will ensure that all students receive a meaningful voter registration opportunity and the voter education materials to which they are legally entitled.
NEW SUBCHAPTERS

SUBCHAPTER 1. VOTER EDUCATION PROGRAM IN PUBLIC AND CHARTER HIGH SCHOOLS

1.1 PURPOSE AND SCOPE

These rules establish the procedures for providing annual voter registration services and a voter education program to promote student involvement in the electoral process, as required by N.J.S.A. 18A:36-27, to students 17 years of age or older, enrolled at a school or educational program operated by a district board of education as defined below.

1.2 DEFINITIONS

“District board of education” means, for purposes of this subchapter, any of the entities below that enrolls students 17 years of age or older:

(a) The board of education of a local or regional school district;
(b) The board of education of a county special services school district or a county vocational school district;
(c) The State district superintendent of a State-operated school district;
(d) The governing body of an educational services commission or jointure commission;
(e) The governing body of the Marie H. Katzenbach School for the Deaf;
(f) The governing body of a charter school; or
(g) The governing body or commissioner responsible for providing educational programs in State facilities operated by or under contract with the Department of Human Services, the Department of Corrections, and the Juvenile Justice Commission.

“Student” means, for purposes of this subchapter, a person enrolled in any school operated by a district board of education who is 17 years of age or older.

1.3 DISTRICT POLICIES AND PROCEDURES

(a) As required under N.J.S.A. 18A:36-27, a district board of education shall provide both voter registration services and a voter education program to students at least once annually. The voter registration services and the voter education program shall be held during school hours, and shall be monitored by a qualified person appointed by the principal of each school. The voter registration services and the voter education program may be held in conjunction with each other, and preferably during either a class period that is mandatory for all students or a class assembly. The voter registration services and voter education program, provided in the manner and at the time required by this subchapter, is in addition to, and not in replacement of, any educational requirements relating to history, civics, or voting, found in N.J.S.A. 18A:35-1 and -2, the Core Curriculum Standards for Social Studies, or in other legal or regulatory sources.

(b) Voter registration services.

1. A district board of education, at least once annually, shall provide all students with a voter registration application along with an opportunity, sufficient information, and sufficient time to complete and submit the application. In determining when to conduct
this activity, the district board of education may consider the percentage of enrolled students who are eligible to register to vote at different times during the year as well as the pendency of elections that tend to generate interest in the voting public. The person providing the voter registration services shall inform students that:

i. they should carefully read and understand the eligibility requirements on the form and only sign and submit the form if they in fact meet all of the eligibility requirements;

ii. they may choose freely whether to register or not, and they cannot be rewarded or penalized in any way for choosing to register or not register;

iii. they need not register then and there if they previously registered to vote from their current address through some other means; and

iv. they can assist the students in completing the form and/or answer questions about how to properly complete the voter form.

2. A district board of education shall arrange for a responsible school employee to offer to collect the completed voter registration applications and deliver or mail those collected to the County Commissioner of Registration within seven (7) days of the students’ completion of the application or sooner if a relevant voter registration deadline occurs prior to that date.

3. A district board of education shall provide that voter registration applications will be made available in the principal’s office, guidance office, or other similarly accessible locations throughout the school year.

(c) Voter education programs.

1. A district board of education shall provide a voter education program to all students.

2. The voter education program shall include:
   i. a summary of voter registration eligibility requirements;
   ii. information on the role of a citizen and the importance of voting; and
   iii. instruction on when, where and how a person casts a ballot.

3. The voter education program may include information on:
   i. the different political offices;
   ii. when elections are scheduled;
   iii. what a sample ballot looks like;
   iv. a voting machine’s basic layout;
   v. polling place locations so students know where to vote;
   vi. election officials’ contact information so students can learn directly from officials;
   vii. voting by a mailed or absentee ballot, including how a college-bound student can vote in that manner or register at a college address;
   viii. how students can conduct nonpartisan voter registration drives in the school, in their community, or elsewhere, and what organizations and resources are available to assist in such drives; and
   ix. such other relevant information as the district board of education deems appropriate.
4. A district board of education whose curriculum incorporates, and actually teaches, to pupils in grades 9-12, the information in (c)(2) above, need not conduct an annual voter education program, but the annual voter registration services required by (b) above are required regardless.

(d) All materials and instruction comprising the voter registration services and voter education program shall be nonpartisan and conform to the provisions of N.J.S.A. 18A:42-4, which prohibits the distribution of literature that promotes, favors, or opposes any candidate, bond issue, or other public question to be submitted at an election.

1.4 ANNUAL REPORTING

Each district board of education subject to the Quality Single Accountability Continuum (QSAC) reporting requirement, pursuant to N.J.S.A. 18A:7A-3 et seq., shall report compliance with this subchapter as specified in the QSAC reporting forms.

Each district board of education that is not subject to the QSAC reporting requirement shall provide an annual report of the voter registration services and voter education program. The annual report is to be filed with the Department of Education no later than July 1 of each calendar year. The annual report shall be filed on a reporting form prescribed for that purpose by the Department. The annual report shall include the following information:

(a) An affirmation that in the prior school year the district board of education complied with 1.3 above;
(b) The number of students known to have completed voter registration applications;
(c) The number of such applications transmitted to the County Commissioner of Registration;
(d) A written narrative by the school administrator or a designee that describes any special achievements, events, problems or initiatives in carrying out the voter registration services and voter education program prescribed by 1.3 above.

SUBCHAPTER 2. VOTER EDUCATION PROGRAM IN NONPUBLIC HIGH SCHOOLS

2.1 PURPOSE AND SCOPE

These rules establish the procedures for providing annual voter registration services and a voter education program to promote student involvement in the electoral process, as required by N.J.S.A. 18A:36-27, to students 17 years of age or older, enrolled at a nonpublic school.

2.2 DEFINITIONS

“Nonpublic school” means, for purposes of this subchapter, a secondary school within the State, other than a school operated by a district board of education as defined in § 1.2, offering education for grades 9 through 12, or any combination thereof, wherein any child may legally fulfill compulsory school attendance requirements.
“Student” means, for purposes of this subchapter, a person enrolled in any nonpublic school who is at least 17 years old.

2.3 NONPUBLIC SCHOOL POLICIES AND PROCEDURES

(a) As required under N.J.S.A. 18A:36-27, the chief administrator of each nonpublic school shall provide both voter registration services and a voter education program to students at least once annually. The voter registration services and the voter education program shall be held during school hours, and shall be monitored by a qualified person appointed by the principal or other head of each school. The voter registration services and the voter education program may be held in conjunction with each other, and preferably during a class period that is mandatory for all students.

(b) Voter registration services.

1. The chief administrator of each nonpublic school, at least once annually, shall provide all students with a voter registration application along with an opportunity, sufficient information, and sufficient time to complete and submit the application. In determining when to conduct this activity, the chief administrator may consider the percentage of enrolled students who are eligible to register to vote at different times during the year as well as the pendency of elections that tend to generate interest in the voting public. The person providing the voter registration services shall inform students that:

   i. they should carefully read and understand the eligibility requirements on the form and only sign and submit the form if they in fact meet all of the eligibility requirements;
   ii. they may choose freely whether to register or not, and they cannot be rewarded or penalized in any way for choosing to register or not register; and
   iii. they need not register then and there if they previously registered to vote from their current address through some other means; and
   iv. they can assist the students in completing the form and/or answer questions about how to properly complete the voter form.

2. The chief administrator of each nonpublic school shall arrange for a responsible school employee to offer to collect the completed voter registration applications and deliver or mail those collected to the County Commissioner of Registration within seven (7) days of the students’ completion of the application or sooner if a relevant voter registration deadline occurs prior to that date.

3. The chief administrator of each nonpublic school shall provide that voter registration applications will be made available in the principal’s office, guidance office, or other similarly accessible locations throughout the school year.

(c) Voter education programs.

1. The chief administrator of each nonpublic school shall provide a voter education program to all students.

2. The voter education program shall include:
   i. a summary of voter registration eligibility requirements;
ii. information on the role of a citizen and the importance of voting; and
iii. instruction on when, where and how a person casts a ballot.

3. The voter education program may include information on:
   i. the different political offices;
   ii. when elections are scheduled;
   iii. what a sample ballot looks like;
   iv. a voting machine’s basic layout;
   v. polling place locations so students know where to vote;
   vi. election officials’ contact information so students can learn directly from officials;
   vii. voting by a mailed or absentee ballot, including how a college-bound student can vote in that manner or register at a college address;
   viii. how students can conduct nonpartisan voter registration drives in the school, in their community, or elsewhere, and what organizations and resources are available to assist in such drives; and
   ix. such other relevant information as the nonpublic school deems appropriate.

4. A nonpublic school whose curriculum incorporates, and actually teaches, to pupils in grades 9-12, the information in (c)(2) above, need not conduct an annual voter education program, but the annual voter registration services required by (b) above are required regardless.

   (d) All materials and instruction comprising the voter registration services and voter education program shall be nonpartisan and conform to the provisions of N.J.S.A. 18A:42-4, which prohibits the distribution of literature that promotes, favors, or opposes any candidate, bond issue, or other public question to be submitted at an election.

2.4 ANNUAL REPORTING

Each nonpublic school shall provide an annual report of the voter registration services and voter education program. The annual report is to be filed with the Department of Education no later than July 1 of each calendar year. The annual report shall be filed on a reporting form prescribed for that purpose by the Department. The annual report shall include the following information:

   (a) An affirmation that in the prior school year the nonpublic school complied with 2.3 above;
   (b) The number of students known to have completed voter registration applications;
   (c) The number of such applications transmitted to the County Commissioner of Registration;
   (d) A written narrative by the school administrator or a designee that describes any special achievements, events, problems or initiatives in carrying out the voter registration services and voter education program prescribed by 2.3 above.

NJ QSAC AMENDMENT

[See Excel document for chart amendments to N.J.A.C. 6A:30 App. (30-47 to -51)].
The district implements programs that prepare students for graduation, post-secondary education, and careers

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<thead>
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<th>F. HIGH SCHOOL/GRADUATION</th>
<th>SUGGESTED DOCUMENTATION</th>
<th>POINT VALUE</th>
<th>DISTRICT SCORE</th>
<th>COUNTY SCORE</th>
<th>COMMENTS (COUNTRY USE ONLY)</th>
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<td></td>
<td></td>
<td>18 [16]</td>
<td></td>
<td></td>
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</tr>
</tbody>
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1. (no change)
2. (no change)
3. (no change)
4. (no change)
5. (no change)

6. a. The district provides voter registration forms to all students eligible to register to vote (*N.J.S.A. 18A:36-27; N.J.A.C. 6A:*______).

   b. The district conducts a voter education program directed to students eligible to register to vote that describes the role of a citizen and the importance of voting (*N.J.S.A. 18A:36-27; N.J.A.C. 6A:*______).

   Copies of materials distributed to eligible students, number of forms distributed annually, description of distribution methods.

7. [6] (no change)

TOTAL POINTS - Section F 18 [16]
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<td>Section B: Curriculum</td>
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<td>Section C: Instruction</td>
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<td>Section D: Mandated Programs</td>
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<td>Section E: Early Childhood</td>
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<td>Section F: High School/Graduation</td>
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