

The California Voting Rights Act and the Process for Transitioning To A By-Trustee Area Election Method



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At-Large Elections

Candidates must reside within the District's boundaries and are elected by all the voters who reside in the District's boundaries. (Education Code Section 5030(a).) **This is the current method used by the District*

From-Trustee Area Elections

Candidates must reside in specific geographic areas within the District's boundaries called "Trustee Areas", but are elected by all the voters who reside in the District's boundaries. (Education Code Section 503(c).)

By-Trustee Area Elections

Candidates must reside in specific Trustee Areas within the District's boundaries and are elected only by the voters who reside in the same Trustee Areas. (Education Code Section 5030(b).) **The only election method immune from liability under the CVRA*

The California Voting Rights Act of 2001

- Added Elections Code Section 14027 Which Provides:
 - An **at-large method of election** may not be imposed or applied in a manner that **impairs the ability of a protected class to elect candidates of its choice,**
 - or its ability to influence the outcome of an election,
 - as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

Litigation Risk

- The California Voting Rights Act provides that prevailing parties (**other than the public entity**) are entitled to an award of their attorneys fees and costs.



Litigation Costs

- Attorney Fee Awards and Settlements
 1. City of Palmdale (\$4.5 million)
 2. City of Modesto (\$3 million)
 3. City of Anaheim (\$1.2 million)
 4. San Mateo County (\$650,000)
 5. City of Santa Barbara (\$600,000)
 6. City of Escondido (\$585,000)
 7. Tulare Hospital District (\$500,000)



Process for Transitioning to By-Trustee Area Elections



Transitioning From At-Large to By-Trustee Area Election Process

The Process

- Three different procedures can be used to change from an at-large trustee area process to a by-trustee area election process:
 - Initiated by petition of the electorate;
 - Initiated by the county committee; and
 - **Initiated by resolution of the district (“District-initiated”).**
(Education Code Section 5019(c)(1).)

Transition From At-Large to By-Trustee Area Election Process

The Process

- District-Initiated Process:
 - Begins with the District adopting a by-trustee area election map and a resolution requesting that the County Committee on School District Organization approve the transition from an at-large election process to by-trustee area election process.

Creation of a By-Trustee Area Plan

A demographer and legal counsel can assist the District with dividing the District into Trustee Areas based upon a number of factors:

1. Constitutional “one person, one vote” factor
2. Communities of Interest
3. Natural and man-made boundaries
4. Federal Voting Rights Act Compliance
 - » Citizen Voting Age Population
 - » “Packing” and “Cracking”
5. Respecting Incumbency
6. Other Factors

New Requirements Since 2017

The Process

- Recent amendments to Elections Code section 10010 added the following:
- Prior to preparing proposed trustee area maps, a local entity must hold at least two public hearings to gather community input on the composition of the trustee area maps.
- A local entity must publish at least one proposed trustee area map for consideration by the community.
- Publish the potential sequence of elections to show how the staggered terms will impact individual trustee areas.
- Hold at least two additional public hearings over a 45 day period to gather input on proposed map(s) and election sequencing.
- If revisions are made, publish for at least 7 days prior to adoption.

New Requirements Since 2017

AB 350 Demand Letter

- Prospective plaintiffs must now submit a demand letter to the District prior to initiating a lawsuit under the CVRA
- If the District refuses to change election methods after receipt of a demand letter, a lawsuit may be filed
- If the District changes election methods after receipt of a demand letter, the prospective plaintiff may recover up to \$30,000 (adjusted for inflation) of their costs incurred in issuing the demand
- The Demand also commences a tight timeline for completion of redistricting process

Transition From At-Large to By-Trustee Area Election Process

The Process

- The County Committee must hold at least one public hearing within the District's boundaries. (Education Code Section 5019 (c)(2).)
- Following the public hearing, the County Committee must by resolution either approve or reject the proposal and set a date for the election.

Transition From At-Large to By-Trustee Area Election Process

- If approved, the proposal to change from at large to by-trustee area elections must be submitted to the District's voters not later than the next succeeding election for members of the Governing Board. (Education Code Section 5020(a).)

Transition From At-Large to By-Trustee Area Election Process (cont.)

- If an election is called by the County Committee, the only questions before the voters would be:
 - For the establishment of trustee areas in LUHSD – **Yes**

OR

- For the establishment of trustee areas in LUHSD ESD – **No**

- Questions required by Ed. Code section 5020

What if the Voters Vote **NO**?

- If the voters reject the District's transition to by-trustee area elections, the District would continue to conduct at-large elections.
- At large elections subject the District to liability under the CVRA.
- If sued under the CVRA, the District would not be able to use the outcome of the election as a defense.

Waiver of the Election Requirement from the State Board of Education



Waiver of the Election Requirement

- **The District may file a request with the State Board of Education (“SBE”) to waive the election requirement pursuant to Education Code sections 33050-33053**
- An alternative to the election requirement on the question of whether to change election process.
- Avoids the expense and uncertain outcome of an election on whether to change its election process.

Stakeholder Feedback Required

- The District must consult with bargaining units and obtain their positions on the waiver:
 - Neutral
 - Support
 - Oppose
- The District must consult with “appropriate advisory councils or advisory committees:”
 - Bilingual advisory committee
 - DELAC
 - LCAP

The Waiver Process

- The Board must hold a **public hearing on the waiver request** prior to submitting the request to the SBE. (Education Code Section 33050(a),(d)(1) and (2).)
- Following the public hearing, the Board may adopt the waiver request.
- District must be aware of SBE meeting schedule and plan accordingly.

Effect of Waiver

- Once the waiver is approved by the State Board of Education, the District can conduct subsequent elections for the Board of Education as by-trustee area elections.

Implementing By-Trustee Area Election Method

Regardless of the method used to implement the transition, there is no immediate impact on the term of any current member of the District's Governing Board. (Education Code Section 5021).

Instead, all future elections would occur in the trustee areas in which the Board members whose terms are expiring currently reside.

Implementing By-Trustee Area Election Method

Decennial Updates

- By Law, Trustee Areas must be updated following every decennial census. (Education Code Section 5019.5).
- The 2010 census results were released in April of 2011
- The 2020 census results should be released in April of 2021
- If the District fails to make needed adjustments by March 1st of the following year (2022), the County Committee must do so by April 30th and can charge the District its costs for doing so

Costs

Demographer Expenses

Demographer expenses may vary widely. To conduct a CVRA liability analysis, you may spend anywhere from \$10,000 to \$25,000 depending upon a number of factors including the size of your District. Costs for preparing new trustee areas range from \$18,000 to \$30,000.

Legal Services

Legal services may be in the range of \$5,000 to \$20,000, depending upon the level of service required.

Staff and Administrator Time

Considerable amounts of staff and administrator time are involved.

Question & Answer

Thank You

For questions or comments, please contact:

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