

Assessing Liability Under The CVRA and Transitioning To A By-Trustee Area Election Method



Redlands Unified School District

Prepared by:
Todd M. Robbins, Esq.
Atkinson, Andelson, Loya, Ruud and Romo

aalrr
Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Types of Elections that Can Be Used by School Districts



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).)

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).)

California Voting Rights Act of 2001



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.

What Constitutes a Violation of the CVRA?

- 14028. (a) **A violation [of the CVRA is established if it is shown that racially polarized voting occurs]** in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.
- 14028. (d) **Proof of an intent** on the part of the voters or elected officials to discriminate against a protected class is **not required**.



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.
- *Sanchez v. Modesto* - City paid plaintiffs \$3 million dollars.
- Legislature appears uninterested in changing CVRA.



Assessing Risk (“Liability Analysis”)

- Is there evidence of racially polarized voting in elections?
 - Elections Code section 14028 requires analysis of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.
- Demographers assist in analyzing data and statistics.
 - Ecological regression statistics, census data, voter registration lists, etc.
- Review specific elections involving “protected class” candidates and ballot measures preferred/opposed by members of protected classes.

Elections to analyze

- Elections for the jurisdiction involving a “protected class” candidate.
- Other elections for the jurisdiction where one candidate is preferred by “protected class” voters.
- Overlapping elections (i.e. County Supervisor; Legislature; Congress)
- Statewide, potentially including:
 - 1994 Proposition 187 (benefits for illegal immigrants)
 - 1996 Proposition 209 (eliminates affirmative action programs)
 - 1998 Proposition 227 (replaces bilingual education with immersion)
 - 2003 Proposition 54 (restricted government collection of ethnicity data)
 - 2003 Gubernatorial Special Election (Bustamante vs. Schwarzenegger)
 - 2006 Insurance Commissioner (Bustamante vs. Poizner)

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).)

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

District Initiated Process

- District Adopts:
 - A by-trustee area election map
 - 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.

New Requirements in 2015

Public Hearings

- AB 1440 (signed 9/30/14) adds Elec. Code Sections 10010 and 21507 and adds public hearing requirements before board considers creation or adjustments of trustee areas.
- Two public hearings on the proposal to transition from at-large elections to by-trustee area elections and create trustee areas must take place before the board meeting in which the proposal is on the agenda for approval.
- A third public hearing must take place during the meeting in which the board will vote on the proposal. This public hearing must take place before the vote.

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

County Committee Approval

- 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.

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

Default Process After County Committee Approval

- If approved, the proposal 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).)

Waiver of the Election Requirement

As an alternative to the election requirement and in order to avoid the expense and uncertain outcome of an election on whether to change its election process, the District may file with the State Board of Education (“SBE”) a request to waive the election requirement.

- In order to obtain a waiver, a proper application must be completed and submitted to the SBE.
- The application needs to reflect whether the exclusive representatives of the District’s employees have been involved in the preparation of the waiver request, and their position thereon.

Timeline For Transition



Redlands Unified School District

CVRA By-Trustee Area Timeline
May 1, 2016

Anticipated Date(s)	Task	Completed
May 10 BOE Mtg	1. Present CVRA as an informational item during Presentations at a regularly scheduled Board meeting 2. Criteria for by-trustee areas is discussed	
May 24 BOE Mtg	3. Pass Resolution to initiate transition to a by-trustee area election system by a majority vote of the Board of Education 4. Resolution contains Board "criteria" for by-trustee areas 5. Todd Robbins present to answer questions by the Board during Resolution Hearing	
June, 2016	6. Dolinka Group prepares various draft voting trustee area plans for presentation to the Board and public.	
August 16 BOE Mtg	7. Hearing #1 on concept for moving to by-trustee areas	
August 17 – September 6	8. Outreach Meetings to present and received comment by the public regarding draft voting trustee area plans. Includes bargaining units, and community meetings	
August 31, 2016	9. Submit anticipated item to the State Board of Education requesting General Waiver from ballot requirement	
September 13, 2016 BOE Mtg	10. Hearing #2 on concept for moving to by-trustee areas 11. Update on process and Outreach meetings during presentation or Supt. Report; Final Map will be reviewed	
September 27, 2016	12. Hearing #3 on concept for moving to by-trustee areas; also recommended map will be on Board Agenda 13. Approval of resolution selecting final voting trustee area map and authorizing transition to by-trustee area election by BOE	

Task	Completed
14. Submit approval request to County Committee on School District Organization	
15. Approval by County Committee on School District Organization	
16. General Waiver request from ballot requirement to be approved by the State Board of Education	
17. General Election; BOE At-Large Election (Haller, McPeck, Waner)	
18. By-Trustee Area Election (Holohan, West)	

Possible Criteria

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Redlands Unified School District

By-Trustee Area Criteria
May 7, 2016

The Redlands Unified School District Board of Education will change from the longstanding process of selecting Board of Education members through an "at-large" elections process and move to elections "by-trustee area" to be compliant with the California Voting Rights Act. Thus, effective for the November 2018 Board elections, Board candidates in each area will be elected only by voters who reside in that specific trustee area.

In this transition, the District will initiate the creation of election areas that will follow the criteria listed in this document. Using data from the 2010 Census, the District's consultant, Dolinka Group, will create conceptual trustee area scenarios that divide the District into five new voting areas.

Once conceptual trustee area maps have been developed, the District will host a series of public forums to collect community input regarding the proposed area maps and allow community members to provide comments. Following community input, the Board of Education anticipates selecting by-trustee maps in the fall of 2016.

The California Voting Right Act recognizes the following as permissible criteria for the development of trustee areas:

- Each Trustee Area shall contain a nearly equal number of inhabitants
- Each Trustee Area shall be drawn to comply with the Federal Voting Rights Act
- Each Trustee Area shall be contiguous, as much as possible
- Trustee boundaries shall respect communities of interest*, as much as possible.
- Trustee boundaries shall follow man-made and natural geographic features, as much as possible

In addition, Boards can elect to use other criteria so long as they do not violate the Federal Voting Rights Act. Recognizing that Redlands Unified School District serves the cities of Redlands, Highland, Loma Linda, San Bernardino and the communities of Forest Falls, and Mentone, as well as unincorporated areas of the County, the Board's desire for its Trustees to represent the *entire district* rather than specific areas. Therefore, to accomplish its goal additional criteria to be considered are:

- Each Trustee Area shall include portions of at least two cities or communities
- Each Trustee Area should contain portions of two High School attendance boundaries
- Each Trustee Area must contain multiple school sites (physical location) within its boundaries
- Each Trustee Area must contain multiple elementary or middle school attendance boundaries within its boundaries

**Communities of interest may include neighborhoods, the District's underlying elementary school attendance areas and elementary school "feeder" districts, high school attendance areas, rural or urban populations, municipalities, social interests, agricultural, industrial or service industry interests, and the like, insofar as practicable.*

Question & Answer

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