

Frequently Asked Questions

What is the CVRA?

The California Voting Rights Act (CVRA) prohibits the use of any election system “that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” Jurisdictions can be sued if they elect their governing body using an at-large, from-districts, or mixed election system. If the court finds against a jurisdiction, the jurisdiction must change its election system and pay the plaintiff’s attorneys, experts, and other expenses.

How is the CVRA different from the FVRA?

The CVRA was adopted in 2002, and is based upon the Federal Voting Rights Act of 1965 (“FVRA”) with some important differences that make at-large election systems much more susceptible to legal challenges. For a plaintiff to be successful in a claim of violation under the FVRA relating to at-large elections, the plaintiff must show that: 1) a minority group is sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district; 2) there is racially-polarized voting; and 3) there is “white bloc voting” (the term used by the courts reviewing such cases) sufficient usually to prevent minority voters from electing candidates of their choice. If a plaintiff proves these three elements, then the federal court will consider whether, under the “totality of circumstances,” the votes of minority voters are diluted by the at-large election system.

The CVRA removes two of these factors. It eliminates what is known as the “geographically compact” FVRA precondition (e.g., can a majority-minority district be drawn) as well as the “totality of the circumstances” or “reasonableness” test. Because the CVRA eliminates some of the elements that a plaintiff must prove, defending a lawsuit brought pursuant to the CVRA is more difficult to defend against than a claim under the FVRA. As a result of the lower threshold for proving a claim under the CVRA, many jurisdictions have voluntarily switched to district-based election systems instead of facing litigation.

What’s the difference between “at large” elections and “By-Trustee Area” elections?

Hueneme Elementary School District has an at-large election system, where voters of the entire city elect all members of the Governing Board. “By-Trustee Area” election systems carve HESD’s area of service into By-Trustee Areas. Voters in each By-Trustee Area choose their School Board representative, who must also live in that By-Trustee area.

How have other school districts responded to the threat of litigation under the CVRA?

Many school districts have changed their election method, voluntarily or by court order. Agencies that have attempted to defend their at-large election systems have incurred significant legal costs.

How will transitioning to a By-Trustee Area Election System affect me?

If approved, registered voters in the school district boundaries will have the opportunity to vote for a candidate for School Board that lives in their By-Trustee Area. Registered voters will not be able to vote for School Board candidates from By-Trustee Areas in which they do not reside.

How many By-Trustee Areas will be considered?

At this time, the Governing Board will be considering a map that includes five By-Trustee Areas.

How many school Board members will be elected?

The Governing Board will be considering maps that include five By-Trustee Areas. Once the Board adopts a By-Trustee Area map, the number of By-Trustee Areas in that map will determine the number of Board of Education Members that will be elected in the future.

How can I help shape the By-Trustee Areas?

The Governing Board is conducting public hearings to receive community feedback on the proposed By-Trustee Areas. Two public hearings will be held before the release of draft maps, and at these hearings residents will be asked to provide input on potential “communities of interest” to follow when shaping draft By-Trustee Area maps. There will be three additional public hearings at subsequent Board meetings. The Governing Board will consider an ordinance establishing By-Trustee Area Elections, By-Trustee Area boundaries and which By-Trustee Areas will hold elections and when.

What draft maps will be considered by the Governing Board?

The Governing Board will consider one or more draft maps prepared by a professional demographer.

When will the maps be available to the public?

On or before Monday, March 4, 2019, the qualifying maps will be posted on the school district’s website.

The Governing Board will make the final determination on which maps, if any, it wishes to consider for possible adoption.

What input will the public have on map selection?

Once the maps are released for public review on the Hueneme Elementary School District’s website on or before Monday, March 4, 2019, the Board of Education will have three public hearings in which it will take public testimony regarding the draft maps. Members of the public and interested parties also have the option of submitting written comments on the draft maps, including which map or maps they support.

What criteria will be used to select the final map?

Assuming that the Governing Board chooses to adopt a map and go to By-Trustee Area elections, the Board will consider a range of factors in selecting the final map including (but not limited to) equal population, communities of interest, compactness, contiguity of the districts, visible boundaries, and respect for voters’ wishes and continuity in office.

What is a community of interest?

A community of interest is any distinctive area within the school district boundaries that has a definable group of people, unique geography or some other distinguishable feature or characteristic that it would be undesirable to divide in the creation of By-Trustee Areas. Some of these may already be clearly established and others may be defined as a result of this process. This distinction requires strong community input to ensure communities of interest are protected in this process.

How will written communications be memorialized during the public hearing process?

All written communications will be provided to the Governing Board and will be part of the public record. The Governing Board will consider the public record as part of its determination on the number of districts to consider and how the final district map will be configured, if the School Board chooses to adopt a By-Trustee Area map.

How will the final map be chosen?

The Governing Board will consider a range of factors if it chooses to select a district map of five geographic areas as part of the transition to a By-Trustee Area Election System. These factors include (but are not limited to) equal population, communities of interest, compactness, contiguity of the districts, visible boundaries, and respect for voters' wishes and continuity in office.

What is the timeline for the change?

The timeline is prescribed by California Election Code 10010.

When will these new By-Trustee Area Elections take effect?

If approved, the new By-Trustee Area Elections would not become effective until the election in November 2020. However, the specific date on which a Board of Education Member will be elected from each of the new geographic areas (i.e., either in November 2020 or November 2022) will be determined as part of the ordinance that adopts the new districts.

Will all 5 Governing Board member seats be open for election at the District's next general election (2020)?

No. The District's November 2018 elections seated three Trustees for four-year terms through 2022. In 2020, the District will have two Governing Board seats up for election during its first by-trustee area election. Other public entities who have litigated allegations of CVRA violations and, after receiving unfavorable court decisions, on occasion have been ordered by the court to hold a special elections to refill all seats - that is not the case here.

What happens if draft map options draw multiple current Governing Board members within the boundaries of a single trustee-area?

Under all circumstances, all Governing Board members serve out his or her full terms of office. Specifically, the Education Code contemplated transitions from at-large to by-trustee area elections at Education Code § 5021(a) which states, in pertinent part, that "[i]f a proposal for the establishment [of trustee area elections] is approved . . . any affected incumbent board member shall serve out his or her term of office..."

It is possible that map options will be drawn with more than one Governing Board member living within a single trustee area. Whether or not such a scenario will exist depends on population density data and the locations of residences of Governing Board members. In such a scenario, if all Governing Board members within a given trustee area have terms that expire simultaneously (i.e. 2022), those members serve their full terms but only one may win re-election from the trustee area within which they reside – or a challenger can prevail in that area's 2022 election.

Alternatively, a given trustee area may be home to multiple Governing Board members whose current terms have different expiration dates (i.e., one Governing Board member's term expires in 2020 while another's expires in 2022). In such cases, the Governing Board member whose term

expires in 2020 will term out in December 2020. Since another sitting Governing Board member will still hold office in that trustee area, the member with expiring term may not run in 2020 for reelection in that trustee area. He or she is permitted to run in 2022 in that trustee area when that seat is available or may establish residency and become domiciled within a trustee area open for election in 2020.

If multiple Governing Board members end up paired within a single trustee area, how does the Board determine the election sequence of Trustee Areas not currently inhabited by Governing Board members?

The transition to a By-Trustee Area Election System requires the Board to consider election sequencing. Not all Board member seats will be up for election at the same time. For the Hueneme Elementary School District, two seats are available in 2020 for election and three seats are available in 2022. When multiple Board members reside in the same Trustee Area, at least one created Trustee Area will be “vacant” of a current Governing Board member at the time a map option is adopted by the District. To determine the sequence of which Trustee Areas are to hold elections next, the Board must follow the guidance of Election Code section 10010(b):

“In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, *the governing body shall give special consideration to the purpose of the California Voting Rights Act of 2001...*and it shall take into account the preferences expressed by members of the districts.”

The purpose of the CVRA is to increase the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election. As such, the Board intends to select the trustee areas that have the highest percentages of eligible voters (also known as Citizen Voting Age Population or CVAP) of members of protected classes to be first available to hold elections. The Board will only be able to make this determination after holding its pre-map public hearings where it will review the District demographic data and community input and upon the creation of draft map options by the District’s demographer.

Notwithstanding the Board’s preference for election sequencing, Education Code section 5021(a) authorizes the County Committee on School District Organization to “determine by lot the trustee area from which the nomination and vacancy on the governing board shall be made.” In other words, the County Committee on School District has the authority to determine the Trustee Areas eligible for the next vacancy by lot.

Is it best to ask questions about the area formation process at the Public Hearings? Does the Public Hearings format allow for questions to be addressed?

The purpose of these public hearings is for community members and the Board to comment on the potential composition of Trustee Areas.

In practicality, the Board will open the public hearing and the demographer and legal team will briefly explain the process and describe the type of feedback being sought at this stage. Within the process the demographer and legal team will prepare examples, such as “I would like to keep Neighborhood X and Neighborhood Y in the same trustee area...” or “I think – Ventura Road, Hueneme Road, etc. – may make sense as a trustee area boundary because it makes sense geographically or seems like a natural boundary.”

When the presentation concludes, members of the public can approach the podium and comment. At this stage, it is not uncommon to receive questions about the process as opposed to actual feedback. Usually, once draft maps are released to the public there tends to be an uptick in public participation.

After these public hearings, the demographer will take that feedback and prepare legally permissible maps that attempt to take that public feedback into consideration while still balancing population and other factors.

When will the 2020 U.S. Census data be considered for the formulation of the By-Trustee Area Election System maps?

Adjustments to the By-Trustee Area maps would need to be considered and adjusted in 2021 based on the 2020 U.S. Census data results.

Following each decennial federal census, Education Code 5019.5 specifically requires school districts with trustee area elections to adjust boundaries of any or all trustee areas of the district to ensure that one or both of the following conditions is satisfied:

(1) The population of each area is, as nearly as may be, the same proportion of the total population of the district as the ratio that the number of governing board members elected from the area bears to the total number of members of the governing board.

(2) The population of each area is, as nearly as may be, the same proportion of the total population of the district as each of the other areas.

(Education Code section 5019.5(a).)

The District is required to make any such adjustment by the first day of March of the year following the release of the new decennial census data. Therefore, the current census is used for the 2020 election but, depending on potential population growth and movement depicted via the 2020 census, the trustee area map lines may need to be adjusted to achieve equal population in advance of the 2022 election.

What if there is no candidate in one of the By-Trustee Areas?

There is a limited, 25 day window for candidates to file declarations of candidacy with the County Registrar to run for office. This narrow window opens 113 days prior to the election and closes 88 days prior to the election. If no qualified candidate emerges from a Trustee area up for election, the Board may appoint to fill the vacancy from a resident of that Trustee area.

Unlike ordinary appointments, according to Education Code section 5326, if no candidate has been nominated by 83 days prior to the election, the Board is authorized to appoint a qualified person to the Board. Such appointment must occur at a Board meeting prior to Election Day and the appointed member will be "seated" to the Board at the organizational meeting. Unlike, most vacancies, vacancies and appointments due to failure to elect result in the appointee serving "as if elected" – for the full term. (Education Code section 5328.)

The District's Board Bylaw, BB 9223 – Filling Vacancies, describes the process for finding qualified candidates to appoint. Specifically, the District is required to advertise in the local media to solicit

candidate applications or nominations and a committee consisting of less than a quorum of the Board shall ensure that applicants are eligible for Board membership and announce the names of the eligible candidates. The Board shall interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote. (BB 9223; see also Education Code section 5328.5.)

In sum, should no qualified candidate emerge, starting at the close of business on the 83rd day prior to election day, the District will begin to advertise the open seat within the relevant Trustee-area and form a committee of less than a quorum of the Board (2 Board members). Importantly, the appointee must be eligible for office and reside within the specific vacant trustee area. The appointment must be made at a Board meeting prior to Election Day. The appointed member will serve as if elected in the general election – for four years.

Why is HESD being divided into five By-Trustee Areas, instead of three or seven or nine?

Pursuant to Education Code section 35012, the default number of trustees for a given school district is five. In certain circumstances, a unified school district may be formed with, or increase its number of trustees to, seven members. Also, elementary school districts with daily attendance of under 300 students are permitted to have as few as three trustees. While there is a process that permits school districts to move from five to seven or from seven to five trustees, here, the recent and ongoing transition to a By-Trustee Area Election System does not impact the number of trustees representing and governing the District. Instead, this transition only alters the method by which trustees are elected. Since HESD is governed by a five Trustee Board, the draft map options each create five Trustee areas.