

SCHOOL AND COLLEGE LEGAL SERVICES *of California*

*A Joint Powers Authority serving school and
college districts throughout the state with offices in
Eureka, Hayward, San Rafael, Santa Cruz and Santa Rosa*

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org

*Employer-Employee
Relations Coordinator
Robert S. Latchaw*

*Of Counsel
Robert J. Henry
Virginia A. Riegel*

LEGAL UPDATE

April 22, 2011

To: Superintendents, All Member School Agencies

**From: Marko Fong, Assistant General Counsel MF
Frank Zotter, Jr., Senior Associate General Counsel**

Subject: 2010 Census, Trustee Area Boundaries and Voting Rights Law

The results of the 2010 census are now available.¹ Because of the decennial nature of the census, we are reminding K-12, community college districts and county boards (school agencies) that are in trustee areas, or that are considering changing over to them, that they should be aware of their duties under Education Code section 5019.5.

This section requires school agencies that are divided into trustee areas² to adjust the boundaries of those trustee areas consistent with the results of the most recent census. Boundaries need to be adjusted for the following:

- 1) School agencies must adjust the internal boundaries so that each trustee area meets one of two conditions.
 - a) The voting age eligible population of the trustee area is in the same proportion as the percentage of trustees to be elected in that trustee area. For example, if a District has five trustees, each district should have approximately one-fifth of the voting age eligible population in each trustee area, or

¹ <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

UC Berkeley maintains a web-based resource of California specific census information
<http://swdb.berkeley.edu/census2010/pl194.html>

² For purposes of 5019.5, a trustee area district is any school agency that has any form of voting by smaller geographic areas within the district.

- b) The voting age eligible population of each trustee area is comparable to each of the other identified trustee areas. The general guideline is that the largest trustee area should be no more than 10% more populous than the smallest trustee area in the school agency, although school agencies should, of course, try to make the trustee areas as close in size by voting eligible population as possible.

When Should Districts Complete Adjustments?

The school agency must complete its adjustments by March 1 of the year following the release of the census results. The results of the 2010 census were released in early 2011. School agencies must complete their adjustments by March 1, 2012, if they make those adjustments on their own.

If the school agency does not complete this task, the county committee on school district reorganization must complete the task by April 30, 2012.

While March, 2012, may seem a long way off, the drawing of district lines can be a very complex and sometimes controversial process. All school agencies should start working on reviewing, possibly adjusting or setting their district boundaries as early as possible.

What Needs to be Done?

- 1) School agencies should look at the results of the 2010 census to see if there have been significant demographic shifts within their boundaries. School agencies that are not in trustee areas may want to use this as an opportunity to determine whether the school agency should be divided into trustee areas. School agencies that are not in “pure” trustee areas (meaning that its representatives must live in and be voted in by a single geographical part of the district) may want to look into changing over to “pure” trustee areas. (See the CVRA section below.)
- 2) School agencies that have divided into trustee areas, or are contemplating creating trustee areas, should contact their county committee immediately to coordinate the review and possible adjustments. The county committee will often have cost advantages such as being able to contract for a single demographic firm to work with a number of school agencies in the county.

County boards of education that have the same number of board members as the County Board of Supervisors should be aware that they may adopt the county supervisorial districts as their trustee areas.

The redistricting process involves using the latest census figures to determine the size of each political subdivision (trustee area) and then calculating if a given trustee area is oversized (larger in voting age eligible residents) compared to the other trustee areas.

If a trustee area is oversized, then the areas located near the boundary of that trustee area must be transferred to the neighboring trustee area to decrease the size of the larger trustee area. Newer technology, such as geographic information systems (G.I.S.) make it possible to see in real time how the drawing of proposed boundaries affects the size of the voting age eligible population in a given trustee area.

In general, it is not recommended that school agencies attempt to do this analysis without professional assistance. School agencies are best assisted by a demographic firm or a civil engineering/planning firm for the population analysis and legal assistance to document the boundary adjustments.

- 3) School agencies with trustee areas that have territory in more than one county should contact the county committee for each county and work to coordinate the adjustment of trustee area boundaries.
- 4) School agencies that are not divided into trustee areas or that use a combination of trustee area and at-large voting should examine the census results to determine if they need to transition to a “pure” trustee area voting system. (See CVRA section below.)

Implications of the California Voting Rights Act (CVRA) and Other Considerations:

The CVRA became law in 2002. The Act gives members of a resident minority group the right to force a shift from “at-large” elections to trustee areas if the school agency has a history of “racially polarized” voting as defined by the Federal Rights Act.³ The 2010 census results are the first to be affected by CVRA. Because advocacy groups that have filed suit under CVRA use census results as a first screen for targeting vulnerable agencies, any school agency that is not in a “pure” trustee area should be cognizant of both the census data for the agency and the requirements of CVRA.⁴ If your District happens to be in a charter city and your school agency is expressly part of that charter, please see the last section of this memo.

The CVRA has a very strict definition of “trustee-based” area. This definition is different from the definition used in Education Code section 5019.5. Under CVRA, “District-based elections” is defined as follows:

“ a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.”
(Elec. Code 1402, subdivision (b).)

In other words, agencies that have trustee area representatives who are voted on by voters who live outside that trustee area or that have certain representatives elected “at large” are not in

³ 42 U.S.C. Sec. 1973 et. seq.

⁴ See Legal Update 01-2011

“District-based elections” or trust areas for purposes of the CVRA, even though they are in “trustee areas” for Education Code purposes.⁵

Under CVRA, if a nondistrict-based election method (either no trustee areas or areas elected at large) can be shown to have resulted in “racially polarized” voting, any member of a minority group who resides in that school agency may sue to force the school agency to adopt district-based elections.

It is critical that school agencies understand that “intent” to discriminate plays no role in finding liability under CVRA and that plaintiffs are entitled to attorney’s fees should they prevail. In the few cases that have resulted in a legal challenge, the attorney fees have been substantial (over \$1 million dollars). The impracticality of dividing a school agency into evenly sized trustee areas that enhance minority representation is also not a defense in determining an agency’s liability under the Act. An educational agency cannot escape liability by claiming that it is too small to be divided into trustee areas or that it is geographically or demographically unsuitable for the creation of individual trustee areas that increase the chances for the election of a minority candidate for that area. For example, in some areas the ethnic minority is of significant size but might not live in concentrated neighborhoods where they are a majority or close to a majority.

As a precaution, we recommend that school agencies look at their demographic information from the 2010 census. If there is a racial minority in the district whose total voting aged eligible population, multiplied by the number of seats on its governing board, exceeds the total voting-aged eligible population of the district, the district should consider converting to trustee areas. Such trustee areas should satisfy the “district-voting” definition in CVRA.⁶ Creation of such trustee areas is particularly called for if that minority does not have historical representation on its governing board in proportion to the size of its minority population.

For example:

#1 If School District A has 100,000 voting age eligible residents, a 7 member board, and is twenty percent voting age eligible Latino.

$20,000 \times 7 = 140,000$ is higher than the total voting age eligible population of the District (100,000).

Because the number that this formula yields is higher than the total voting age eligible population of the district as a whole, the educational agency is at risk of having a CVRA issue. Such agency should, at a minimum, start investigating whether the conversion to CVRA-compliant trustee areas is prudent.

⁵ Some educational agencies have trustee areas that elect more than one representative from that trustee area. While this appears to possibly work for CVRA purposes, the agency may want to consider the conversion to single trustee areas with a single directly elected trustee for each trustee area for Fourteenth Amendment and Federal Voting Rights Act reasons.

⁶ This is a screen not a definitive test.

#2 Community College District B has 10,000 voting age eligible residents, a 5 member board, and has an African American voting age eligible population of 10% (1,000 voting age eligible African American residents).

$1,000 \times 5 = 5,000$ or less than the total voting age eligible population of the District.

Since the number that this formula yields is lower than the total voting age eligible population of the district, the educational agency is unlikely to have a CVRA issue.

#3 School District C has 1,000 voting age eligible residents, a 5 member board, and is fifty percent Latino (500 voting age eligible Latino residents). The current board has a Latino member.

$500 \times 5 = 2,500$ which is more than twice the total voting age populations of the District.

The expected Latino membership on the board would be at least 2. This district should start investigating whether the conversion to CVRA-compliant trustee areas is prudent. If, however, the district has a history of boards with 2 or more Latino members prior to the current governing board, it may not have a CVRA issue.

School agencies that meet Examples #1 or #3, above, should investigate their history of representation by members of that minority group on its governing board and/or check to see if there have been significant disparities between the way that the minority population votes on relevant statewide issues (such as Prop 187 or Prop 209) and the way the at-large majority voted. This information is sometimes not easy to come by, but it can sometimes be derived from precinct reports for particular neighborhood and polling either at the time of or after the election. It is this type of information that can suggest “racially polarized” voting. If the school agency has a proportionality issue and some history of racially polarized voting, we recommend that the agency consult with an attorney to determine whether a conversion to “pure” trustee areas should be initiated.

How to Convert to Trustee Areas or Reconfigure Existing Trustee Area Voting Schemes Not Covered by CVRA

School agencies may make this change in two ways. They can seek a referendum on the proposed change via election or through their county committee they can apply for a waiver with the California Department of Education. School agencies that are currently in trustee areas will have a limited time to make this conversion. We recommend that school agencies that make the conversion pursue a waiver with the Department of Education rather than hold a referendum.⁷ If your school agency has heard from an advocacy group about the issue of racially polarized voting, contact legal counsel immediately.

⁷ A district with disproportionate voting might well turn it down and the issue will be even more difficult to correct.

Charter City Issues

It is unlikely that school districts that are created by charter cities are subject to CVRA. A charter city has much wider latitude to set its own election procedures than a general law city.⁸ CVRA is state law and not part of the State Constitution.⁹ If your district is in a charter city and identified in the city's charter, you should look closely at the actual charter to see if and how it addresses local election procedures. A charter city may not, however, adopt local procedures that violate the state or federal constitutions.¹⁰ Districts in charter cities must still comply with Fourteenth Amendment "one person one vote" issues and Federal Voting Rights Act requirements such as the Federal tests for racially-polarized voting and voting and compactness and contiguity of trustee areas.¹¹

Please contact our office if you have questions about this or other legal matters.

⁸ *Mackey v. Thiel* 262 Cal App. 2d 362 (1968).

⁹ There may be a claim that "at-large" voting violates the 14th Amendment of the constitution in certain circumstances. We do not foresee this in the immediate future.

¹⁰ *People v. Elkus* 59 Cal App 396 (1922).

¹¹ The Federal Voting Rights act also calls for trustee areas to correct racially polarized voting, but intent and impracticality play a more significant role in determining if there has been a violation of the Federal Act.