MEMORANDUM

TO: Interested Entities

FROM: Nellie Meyer, Ed.D., Superintendent

DATE: June 6, 2019

RE: Mt. Diablo Unified School District Request Of The State Board Of Education For A Waiver Of The Requirements Of Education Code Sections 5019-5020 That The Establishment Of Trustee Areas And Adoption Of A By-Trustee Area Election Process Be Put To A Vote By The Electors Of The District

Introduction.

The Mt. Diablo Unified School District ("District") intends to seek a waiver of the above-referenced requirements of the Education Code.

As a part of the waiver process, the District is required to notify its collective bargaining units and all committees and councils that have an interest in the subject matter of the waiver ("Interested Entity"). You’re unit/committee/council has been identified as an Interested Entity and are therefore being provided with this notice explaining the nature of the waiver requested and the facts that have led to the request.

After reviewing this information, please contact the Legal Office at the District office to indicate whether your Interested Entity either supports, opposes or is neutral to the District’s waiver request by no later than Wednesday, June 19, 2019, at 4:00 p.m at 925-682-8000, ext. 4001, or schoenkel@mdusd.org or amental@mdusd.org.

The Waiver Request.

The District desires to have the requested Education Code sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible thereby eliminating the need to go through the expense and uncertainty of a ballot measure on this subject.

It is imperative that the District adopt these areas and establish this process without delay and without interference so that the District can avoid liability under the California Voting Rights Act of 2001 ("CVRA") as a result of its current at-large election system. The District recently received a demand letter requesting the District to change its election system. The District’s
failure to timely adopt trustee areas and establish a by-trustee area election process may leave it vulnerable to litigation brought under the CVRA.

**CVRA History**

The California Legislature enacted the California Voting Rights Act of 2001. (See California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove that actual racial injury exists. The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys’ fees to plaintiffs’ attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys’ fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Since that time, a large number of other California cities, special districts and school districts have been sued or threatened with lawsuits under the CVRA.

The District is preparing a proposed by-trustee area election plan which the Contra Costa County Committee on School District Organization (“County Committee”) will consider at a future meeting. Under Education Code section 5020, the County Committee would normally call for an election and put the matter to a vote of the District’s electors.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in a timely manner (prior to the 2020 election cycle), without the added expense and uncertainty of an election on the matter and will eliminate any potential liability it may have under the CVRA going forward.

Please contact Larry Schoenke, lschoenke@aalrr.com or schoenkel@mdusd.org or 925-682-8000 ext. 4001, should you have any questions or concerns regarding the foregoing and please indicate your support, opposition or neutrality by Wednesday, June 19 2019, by 4:00 p.m.

Thank you for all that you do.