

FULLERTON JOINT UNION HIGH SCHOOL DISTRICT

**NOTICE OF PUBLIC HEARING**

**Fullerton Joint Union High 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 Fullerton Joint Union High 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”).

Your 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 Jennifer Williams 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 **May 6, 2016, at 4:00 p.m.**

The Board will consider seeking the waiver after a public hearing on the waiver is held at the Board’s April 19, 2016 regular Board meeting.

**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.

If the District adopted these areas and established this process it would avoid liability under the California Voting Rights Act of 2001 (“CVRA”) as a result of its current at-large election system.

**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.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of \$110,000 pursuant to a settlement agreement. Other Districts have been sued and have had to pay sums to CVRA plaintiffs in settlement of CVRA litigation. In light of the information provided and in view of the amount of attorneys' fees public agencies have been paying plaintiffs under the CVRA, the District is exploring the possibility of establishing a by-trustee area election process. (The District does *not* admit any liability under the CVRA.)

The District will prepare a proposed trustee area plan which the Orange County Committee on School District Organization ("County Committee") would 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.

Requesting a waiver will allow the District to complete its transition to a by-trustee area election process in a timely manner, 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.

District representatives, Assistant Superintendent of Human Resources Ed Atkinson and Executive Director of Administrative Services Jennifer Williams, have requested the opportunity to make a brief presentation at the FSTO Executive Board meeting on April 26, 2016, and the CSEA Executive Board meeting on May 5, 2016.

Please contact Jennifer Williams should you have any questions or concerns regarding the foregoing and please indicate your support, opposition or neutrality by **May 6, 2016**, by 4:00 p.m.