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March 27, 2019

VIA CERTIFIED MAIL

RECEIVED

MAR 28 2019

SUPERINTENDENT
MDUSD

Dr. Nellie Meyer, Superintendent
Mt. Diablo Unified School District
1936 Carlotta Dr.
Concord, California 94519

Re: California Voting Rights Act ("CVRA")

Dear Dr. Meyer:

Fifteen years ago, a group of parents from Bay Point petitioned our County Committee on School District Organization to direct the Mount Diablo Unified School District (MDUSD) to elect its trustees from single-member constituencies. At-large elections had been disfavored for many years. The Legislature had just enacted the California Voting Rights Act (CVRA), Elections Code, Section 14025, et seq., to prohibit at-large elections unless it can be shown that it does not promote racially polarized voting, a burden that no jurisdiction has ever met. Still, our County Committee became the first in California history to deny such a citizen initiative. On behalf of the Bay Area Voting Rights Initiative (BAVRI), this petition asks the Board to correct that historical injustice.

By complying with the CVRA and creating trustee areas, MDUSD can empower minority voters, strengthen its Board of Education, and build the community support it needs to improve the quality of education in the District. As described below, BAVRI proposes that MDUSD avail itself of the collaborative process created by the Legislature in 2017 to plan this transition (AB 350). This alternative to litigation was not available to the Bay Point parents when they filed their petition.

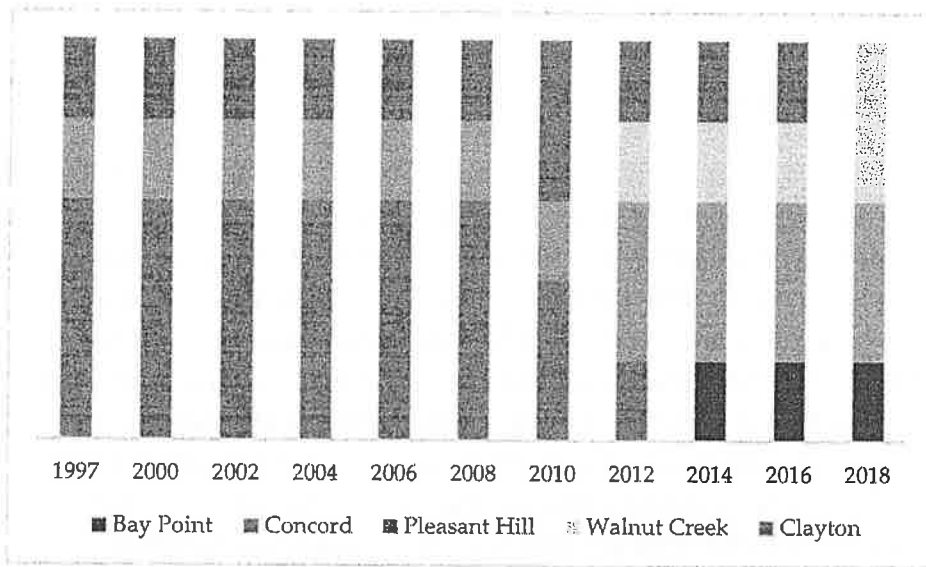
AT-LARGE ELECTIONS THREATEN THE FUTURE SUCCESS OF MDUSD

Much has changed during the past fifteen years. In 2003, the majority of MSUSD's students were White and not Latino¹. The number of Latino students has since doubled, so now fewer than one in three students are White only. But at-large elections dilute minority influence more than ever. Winner-take-all has enabled voters from high-turnout white jurisdictions to control a board that is even less representative geographically, to the detriment of minorities. Until 2010, three of the five trustees lived in Concord, which has 48% of the District's population and is 52% minority. After 2012, there was only one Concord resident on the Board. Although the voters elected a

¹ Unless otherwise noted, "white" excludes Latino ethnicity, which the census tabulates separately from race.

Bay Point resident in 2014, Concord completely lost representation that year. The disengagement of large geographical areas from the Board injures all the District's constituents and makes it difficult for it to muster the broad community support for revenue measures needed to pay its teachers fairly and to improve the performance of its schools.

The District's Largest City is no Longer Represented on the Board



MDUSD has become an extreme anomaly. Of those few that still elect at-large, only two unified school districts in California have more voters. Neither is an appropriate model.² Not a single city that elects council members at-large has a larger population that MDUSD.³

district/city	size			Ratings		Student Makeup		
	students	eligible voters	population	Niche	Great Schools	Latino	Asian	black
San Francisco USD	53,635	641,255	864,263	7	B+	26%	47%	12%
San Juan USD	53,027	245,210	334,618	5	B-	22%	8%	9%
Mt Diablo USD	34,935	181,589	268,717	5	B-	44%	13%	5%
San Bernardino City USD	54,043	151,554	269,118	7	C-	76%	17%	5%
Irvine City	n/a	159,665	256,875		NOT APPLICABLE			

MDUSD has avoided some of the usual hazards of at-large elections. Special interest money has not controlled elections or corrupted decision-making. Instead, the District suffers from the opposite extreme in which campaigns are so minimally funded

² San Francisco USD has unusually competitive elections, but is often seen as a stepping stone for candidacy in supervisory contests (which are districted). San Juan USD, northwest of Sacramento, faces similar challenges to MDUSD, but has a smaller share of minority students.

³ Four large union high school districts (East Side, Anaheim, Oxnard, and Huntington Beach) have a larger number of voters, but all serve fewer students. These districts have smaller budgets, fewer schools, and less complex issues of intradistrict equity.

that they do not inform voters about the basic issues facing the District. In contrast to some at-large districts, the Board has not entrenched itself as a monolithic entity. Instead, it has enjoyed reasonable turnover and renewal.⁴ Since 2000, three incumbents have been defeated for reelection, three have declined to run, and one has died in office. The Board benefits from a mix of long-term incumbents and newcomers, and an unusually high number of educators. There is no doubting the good intentions and objective qualifications that the overwhelming majority of candidates bring to possible public service as trustees. The trustees are less concentrated than is often the case, but the last three cycles have resulted in having four of the five members live in Clayton, Walnut Creek, and Pleasant Hill.

But the at-large system disconnects the Board members who are elected from the voters in their own neighborhoods, and even more acutely from the minority communities that are geographically remote from several of them. It is so costly to campaign in such a large territory that few candidates seriously attempt to do so. In the most recent contested election, reported expenditures for the four candidates totaled less than \$15,000. As such, substantive information about candidate's positions is low. Even in free media, candidates avoid taking positions on the substantive issues affecting the district. Avoiding controversy may be rewarded; in 2002, one Concord resident posted endorsement questionnaires from newspapers in which he advocated for a more equitable distribution of resources.⁵ He was not elected. Although the 2016 election occurred in the midst of a secession campaign, none of the candidates had even addressed this issue in their Voter's Edge profiles. Without community engagement to narrow the field, most elections since 2000 have had 3 to 5 more candidates than positions, which has lowered the threshold for election.

To an increasing degree, many voters abstain from the race entirely. In 2008, trustees were elected with 52,560 and 49,413 votes; eight years later, with just 41,128 and 35,901 votes. Dropoff among those who cast ballots⁶ ranges for 49% to 68%, so high that it has been since 2002 since a majority of those casting ballots actually voted in favor of any candidate. A vote from 20 percent of those casting ballots is usually sufficient for election in the crowded field. A core of voters may reward persistence, as a majority of the current incumbents ran unsuccessfully before being elected. These low-turnout,

⁴ One incumbent has served since 1997, when two members retired with 10 and 18 years of service.

⁵ Smart Voter "The district has put far more money from the general fund and previous bond measures (Measure A) into schools like Northgate H.S. than it has into Mt. Diablo H.S. or Riverview Middle School. Bay Point saw little of "Measure A" while most other schools got new multi-use facilities. While "Measure A" money wasn't being spent on the schools in Bay Point more than \$1million was spent on a swimming pool in Pleasant Hill. The schools in communities like Bay Point have far more teachers, without credentials, on waivers, or teaching "out of subject" than occur in more affluent communities. "

⁶ i.e., the total vote divided by the number of ballots cast and by the number of votes (2 or 3) allowed to be cast.

low-information elections make the District vulnerable to two hazards – the risk of takeover by a single-issue faction and racially polarized voting.

It is typical that at-large school districts are dominated by wealthy, high-turnout communities. For years, a majority of West Contra Costa USD trustees lived in El Cerrito, which has only 10% of its population. A majority of the San Ramon Valley USD lives in the western half of Danville, which also has about 10% of the district's population. Electing three trustees in the low-turnout midterm cycle normally protects incumbents. However, it also makes them vulnerable if a scandal, issue, or special interest mobilizes the electorate, for better or worse. Such a sea change occurred last November when a long-time WCCUSD incumbent stood for reelection after having challenged judicial authority to enforce the Voting Rights Act. The voters elected three Latinas. MDUSD's at-large board is at least as vulnerable to takeover, which is not always as benign. In 2014, the top place finisher for MDUSD trustee received only 28,184 votes, less than half the vote required in a prior presidential year. This suggests that 22 percent of the electorate could have gained immediate control of the Board majority. The winner-take-all system, coupled with the election of three trustees in off cycle, creates a level of volatility that is probably not in the best interests of the District.

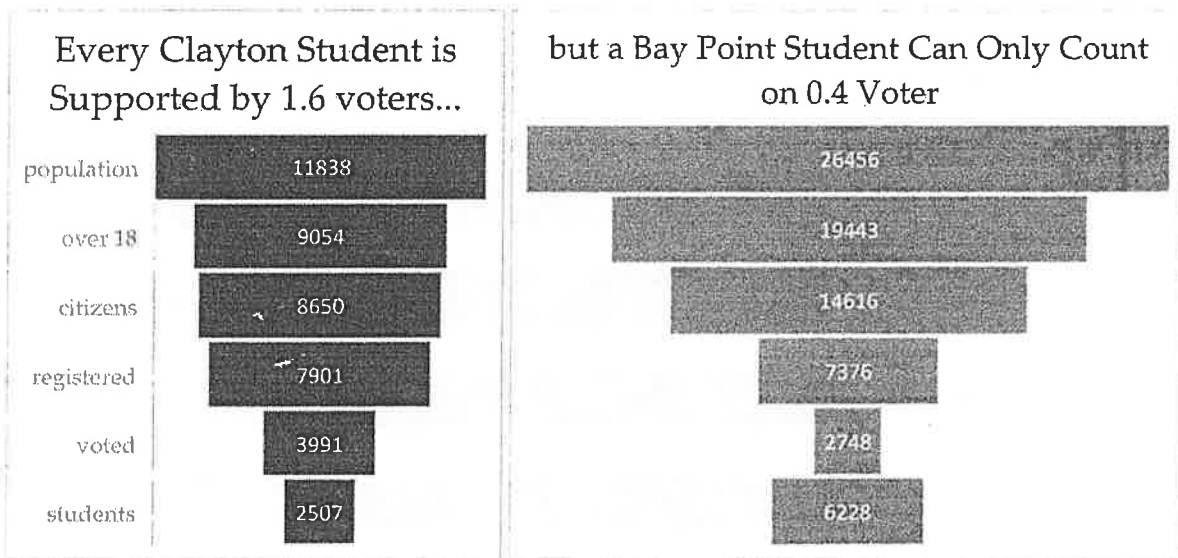
At-large voting creates insuperable obstacles for minority candidates and denies minority voters influence over the election that is equal to other members of the electorate. Since 2000, there has been only one Latino candidate (who did not succeed) and one Asian candidate, who was a charter school supporter who received more support from non-Asian voters than from the Asian community. Endorsements do matter. A review of Smart Voter and Voter's Edge archives reveals only one candidate who has disclosed an endorsement of the League of Latin American Citizens (LULAC), Latinos Unidos, API American Affairs (APAPA), the NAACP or any other organization supporting the aspirations of minority communities. Although several of the incumbents provided long lists of individual endorsements, only five individuals had Latino surnames.

But the absence of representation disserves all neighborhoods and residents of MDUSD, whatever their ethnicity. When campaigns do not engage the community in discussions of the complex issues of equity and resource allocation that plague MDUSD, the trustees who are elected have no mandate to represent either their neighborhood or the huge district at-large. A vigorous election should be able to resolve challenging issues, even one as divisive as the proposed Northgate secession, without resort to external intervention (in this case, the County Committee). But in the election cycles preceding the secession petition, none of the candidate statements on Voter's Edge even dared to express an opinion on the controversy. In the aftermath of the externally imposed resolution, there was no contest for an open seat. The same

community disengagement occurred just as suddenly in 2004, after the County Committee denied the petition to eliminate at-large voting. A single candidate for an open seat can sometimes indicate harmony and consensus. But when voters and activists dissatisfied with a particular outcome disengage from the process, it is a defeat for representative democracy.

At-large voting systematically discriminates against the children of immigrants. We elect officials to serve all the people, even those who have not yet turned 18 or not yet become citizens. Districts are equal in population, so that citizens in each community can elect officials to serve the entire public. At-large voting takes away this basic right of democracy and allows MDUSD's white majority to select its entire Board. The winner-take-all voters in high-turnout jurisdictions are not necessarily committed to funding better schools in Bay Point or Concord. We saw this in the voting on Measure J, which won 78 percent of the vote in Bay Point, but failed in Clayton.

A TALE OF TWO CITIES

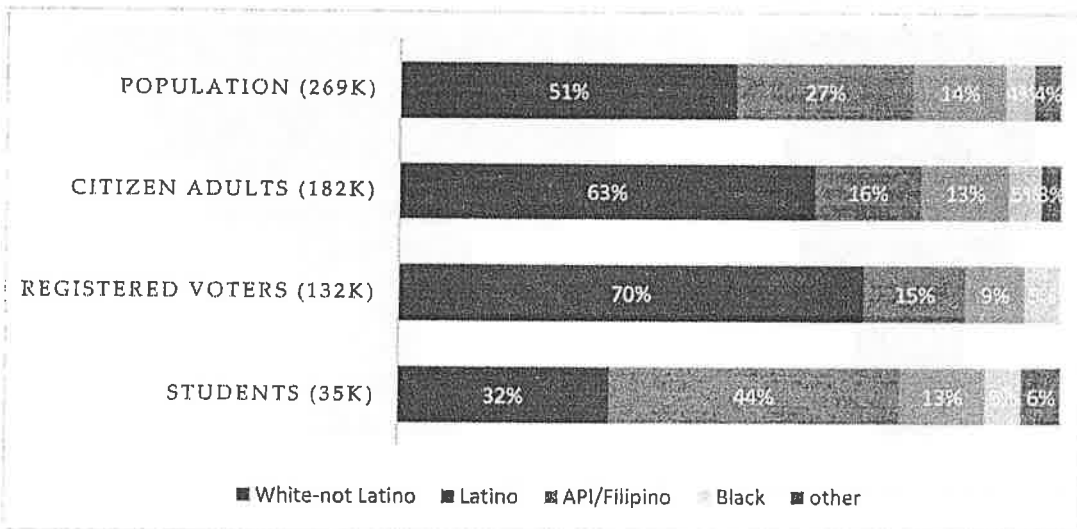


Note: The total number of votes in the most recent Board election (2016) has been divided by two, since each person casting a ballot had two votes.

By creating trustee areas, MDUSD will help equalize the influence of communities where disproportionate number of residents are not yet old enough to vote (or not yet citizens). These are the very areas that have the greatest need for a high-performing school district. Throughout the district, the same Latino neighborhoods that have the largest number of children have the fewest registered voters. In a group of Concord apartments near Meadow Homes Elementary, 34% of the total population are children in MDUSD schools. 56% of the population are citizens, and only 31% are old enough to vote. 24% are registered, and 15% of the total population actually voted in the 2016 MDUSD election. By contrast, a wealthier area

near Pleasant Hill Elementary has only 8% of its population in school. 99.8% of this population has citizenship, and more than 90% are old enough to vote. These particular neighborhoods actually have similar rates of voter registration and turnout, but that still means that 41% voted in Pleasant Hill (compared to 15% in the Latino area in Concord). The Meadow Homes students outnumber voters 2.1:1, ten times the ratio across the freeway. Unlike many wealthy areas with few children, Pleasant Hill Precinct 102 passed Measure J, but not at as high a rate as Concord 116.

The racially discriminatory effect of at-large voting is not limited to a single jurisdiction or to the immigrant community. A bare majority of MDUSD's population is White and not Latino. Only 32 percent of MDUSD's students, but 70 percent of the registered voters district-wide are White. It is an unfortunate reality that White voters do not support education to the same extent as those Latino, Asian, and African-Americans who actually vote. The Latino community has 44% of MDUSD's students, but only 15% of its voters. Asians are 13% of students, but only 9% of the at-large vote. But within trustee areas, these voters – who are strongly committed to education – will have more equal influence over elections, in coalition with the crossover White voters who share their electoral preferences.



The District should reject the ugly rhetoric of “segregation” that special interests used in their fight against the transition to trustee area elections in West Contra Costa USD (WCCUSD), as well as claims made by incumbents at San Ramon Valley USD (SRVUSD) that they were being “targeted” because of the color of their skin.⁷ As Justice Alito wrote last summer for a unanimous Supreme Court, you can assume that it is

⁷ Racially charged rhetoric or attacks on the prospective plaintiff may provide evidence of discriminatory intent, which could create federal liability under either the Fourteenth Amendment or Section 2 of the Voting Rights Act. See page on page 110, below. These trustees may have thought they had nothing to lose, since their districts were already in violation of Section 2. As explained below, MDUSD has an opportunity to comply with the less demanding CVRA.

constitutional to consider the race and ethnicity of voters to the extent necessary to ensure that minorities have an equal opportunity to elect candidates of their choice. Abbott v. Perez, 585 U.S. ____ (2018). The remedy has nothing to do with the ethnicity of incumbents or their challengers. All candidates have the opportunity to compete for the support of minority communities, even if those seeking election to the MDUSD Board have not done so in the past.⁸

In conclusion, the transition to trustee area elections will not only help to equalize the voting power of minorities, although this is an important objective. It will also strengthen the connection between the District's governance and the needs and insights of the diverse communities that it serves, to the benefit of also students, teachers, parents, and taxpayers. Policy decisions will be more well informed and therefore more likely to succeed. Resource allocation will be more equitable.

This is a long-term reform that is not intended to target or to protect any incumbent or challenger. It is about increasing and equalizing the influence of voters of all races and ethnicities, not accommodating candidates. By promoting competitive elections, it will require all candidates to accept new elements of political risk. Elections will now require active campaigning and engagement with voters on the issues; candidates will be less able to rely solely on name recognition and endorsements. Ultimately, the change will result in trustees that look more like the diverse constituency that they serve. This will enable future Boards to serve as a model for public service with which all MDUSD students can identify.

THE IMPACT OF WINNER-TAKE-ALL ON EQUITY AND EFFICIENCY AT MDUSD

In the last contested midterm election (2014), only 9 percent of actual voters in MDUSD were Latino and only 6 percent were Asian. 86 percent were White and not Latino. This is not a reflection of the population or student body. Many Latinos are not yet citizens (or not yet 18). In this jurisdiction, those who are citizens tend to register, but they often fail to vote, particularly in most midterm elections, when MDUSD elects the majority of its Board. According to testimony from Latino activists in West Contra Costa USD, Latinos are demoralized by their inability to influence the level of government they care most about (the school district), leading to low registration and turnout in all local elections.

Inequality of influence affects the allocation of resources and leads to variations among schools within MDUSD. We combined ratings for every schools in each of MDUSD's local jurisdictions using the metrics in the state dashboard, as well as two private internet ratings agencies. Exhibit 1 shows the ratings that were summed for

⁸ . 51 years ago, Robert Kennedy was the authentic candidate of choice for California's Latino community; more recently, Ted Cruz was not.

each type of school in each city. The color code reflects the variation from the District average. The results appear to demonstrate significant differentials to the detriment of the jurisdictions where most Latinos, Asians, and African-Americans live.

		Suspension Rate	Chronic Abs	Grad rate (HS)	Math	Language Arts	College/Career prep (HS)	Niche rating	Great School rating	Composite
Bay Point	ELEM	64%	56%		44%	50%		51%	32%	50%
Bay Point	MIDDLE	43%	104%		69%	33%		62%	20%	55%
Concord	ELEM	99%	99%		91%	90%		90%	86%	92%
Concord	MIDDLE	114%	92%		46%	67%		83%	53%	76%
Concord	HIGH	111%		87%	83%	71%	77%	86%	71%	84%
Pleasant Hill	ELEM	101%	107%		121%	120%		118%	131%	116%
Pleasant Hill	MIDDLE	86%	92%		127%	122%		109%	127%	110%
Pleasant Hill	HIGH	83%		119%	125%	143%	115%	122%	136%	121%
Walnut Creek	ELEM	128%	124%		143%	141%		133%	141%	135%
Walnut Creek	MIDDLE	171%	138%		173%	167%		140%	180%	162%
Walnut Creek	HIGH	83%		119%	125%	143%	154%	122%	152%	128%
Clayton	ELEM	137%	135%		132%	151%		138%	173%	144%
Clayton	MIDDLE	86%	104%		138%	133%		124%	160%	124%

To some extent, the dashboard measures reflect socio-economic conditions that correlate with race and location. It may be more reasonable to evaluate school districts on the extent to which they achieve significant improvements in these metrics. In the two years since the Department of Education implemented the five-by-five placement to evaluate progress, MDUSD schools have had opportunities to improve 420 metrics. It has done so in only 24 cases. 18 have involved suspension, absenteeism, graduation rates, and English Learner progress. Two of the six significantly improved placements in math and language arts involved already high performing schools in Walnut Creek and Pleasant Hill.

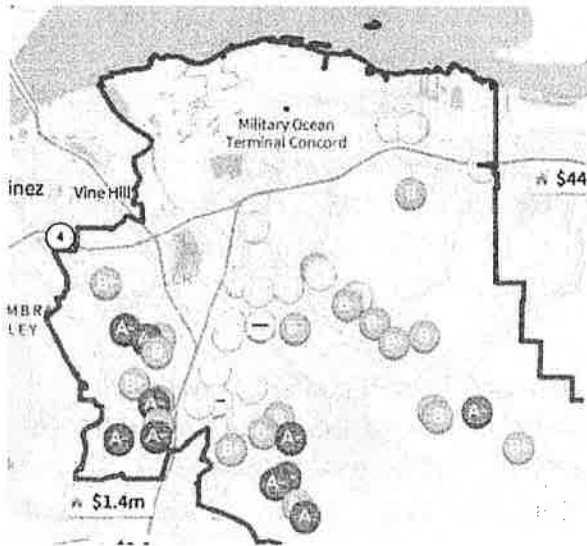
Rating organizations compile public data in ways that significant affect MDUSD's reputation. Niche⁹ gives MDUSD solid marks for its teachers and its success in college preparation, compared to large neighboring districts. However, it criticizes

⁹ Niche is a for-profit internet publisher founded in 2002.

Rafferty to MDUSD, Voting Rights Petition, page 9

the District for its limited resources and poorly maintained facilities.

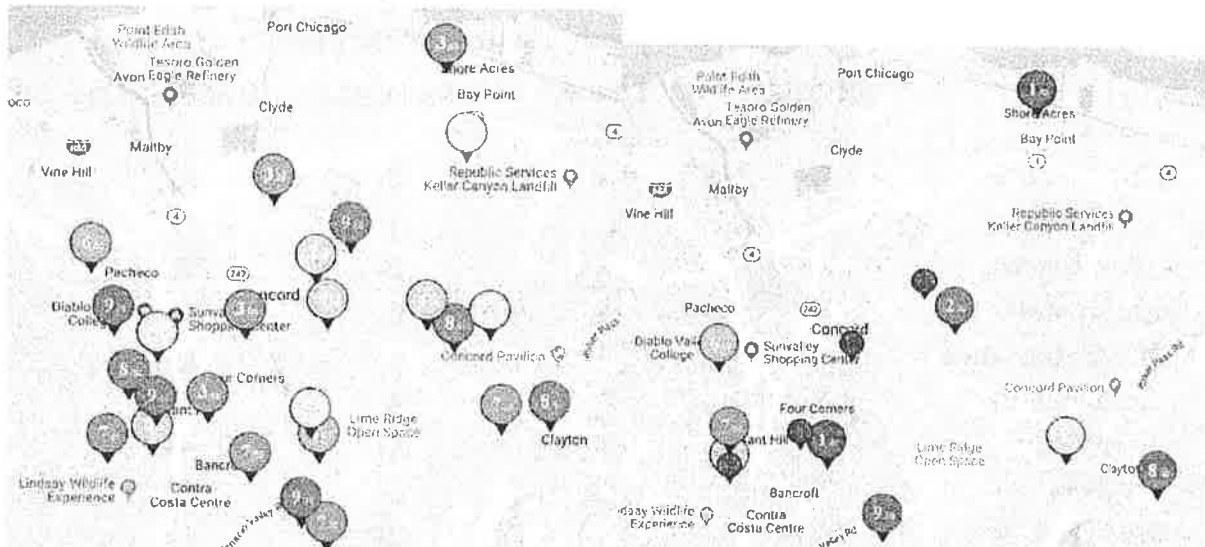
	SRVUSD	Liberty UHSD	Mt Diablo	Antioch USD	WCCUSD
Overall Niche Grade	A+	B	B-	C	C
Academics	A+	B-	B-	C-	C
Administration	B-	C	C-	C-	C-
Clubs & Activities	B	B-	C-	C-	C
College Prep	A+	A-	A-	B	B
Diversity	B+	A	A+	A+	A
Food	B	C	C-	C-	C-
Health & Safety	A-	C-	C+	C-	C
Resources & Facilities	C+	C-	D-	D-	C-
Sports	A-	A	A-	C	B-
Teachers	A	B	B	C+	C-



GreatSchools'¹⁰ equity scores show the varying extent to which minorities achieve lower test scores at the same school. Both Great Schools and Niche, whose rankings are slightly less transparent, give lower marks to schools in Bay Point and Concord than in the more affluent, higher-turnout areas of the District.

Niche (left) uses a letter scale. GreatSchools maps give numeric ratings. Elementary (left) and Middle Schools (right) are shown separately below.

¹⁰ GreatSchools was founded as a non-profit in 1998, and has received substantial grants from the Bill & Melinda Gates Foundation and the Walton Family Foundation. It is currently located in Oakland.



Although MDUSD has a \$67 Mello-Roos levy enacted 40 years ago, it has no other parcel tax available to improve compensation and training for its teachers or to enhance learning programs in its schools. MDUSD has also been less successful in obtaining bond financing that the neighboring districts to finance maintenance of its facilities. Niche gives MDUSD a D- for the quality of its facilities. Unfortunately, low minority turnout limits MDUSD's ability to raise funds from levies requiring voter approval.

COMPLIANCE WITH THE CALIFORNIA VOTING RIGHTS ACT

BAVRI gives notice of our belief, supported by evidence, that at-large voting dilutes minority electoral influence in the election of MDUSD board members, thus violating Elections Code, Section 14047.¹¹ The Board should consider this advice as an opportunity to engage its community in a collaborative process that avoids adversary litigation.

The CVRA prohibits at-large elections when they have the effect of depriving any of the groups protected by the federal Voting Rights Act of 1965 of opportunities to elect candidates of its choice and to influence elections that is equal to that enjoyed by other members of the electorate. The Voting Rights Act is one of the most consequential and effective statutes in American history. Generally, Section 2 of the Act, 52 U.S.C. §10301, now requires the creation of districts that give a single racial or language minority a majority of adult citizens whenever it is possible to do so, even for offices that are elected at large.¹²

¹¹ Consistent with Elections Code, Section 10010(e)(1), BAVRI addresses this notice to the superintendent, who serves as clerk to the Board of Education by virtue of Bylaw 9122 and Education Code, Section 35025.

¹² The drive to eliminate at-large voting began here in California with Secretary of State March Fong Eu's

The CVRA operates differently depending on whether a majority-minority trustee area can be drawn. If there is federal liability, the CVRA offers a kindler, gentler approach to complying with Section 2.¹³ But the CVRA also operates as the Legislature's very strong presumption in favor of creating single-member constituencies even when there is no federal liability. The CVRA still requires racially polarized voting, but this simply means that minorities do not vote exactly the same as Whites do.¹⁴ In the absence of an established minimum threshold, this condition is almost universally satisfied. No at-large jurisdiction has ever successfully contested CVRA liability, even a town as small and homogenous as Martinez. Where every precinct has a similar percentage of Latinos, Asians and African-Americans, creating single-member constituencies may not enhance the influence of these groups. In this circumstance, many jurisdictions have still chosen to abandon at-large voting to avoid litigation. By contrast, MDUSD does have diverse communities. For the reasons stated

We mention this because two recent actions by BAVRI used the CVRA to remedy violations of Section 2.¹⁵ In this context, we demanded a map that fully equalized the voting rights of Latinos and African-Americans in WCCUSD and of Asians in San Ramon Valley USD. By contrast, we do not believe that it is possible to design a compact trustee area within MDUSD in which a single protected group (presumably Latinos) has a majority. In the case of MDUSD and Antioch USD, the Board has greater

successful fight in 1972 to repeal the winner-take-all primary for presidential convention delegates.¹² In 1974, Hernandez v. Stockton USD (Superior Ct. San Joaquin Cty.) required trustee areas as part of a court-ordered plan to desegregate a school district, relying on the Fourteenth Amendment's prohibition against intentional discrimination. The Hernandez case triggered a series of challenges to at-large systems that disenfranchised African-Americans in the South. The Supreme Court initially suggested that courts could strike down electoral structures and devices based if they had the effect of diluting minority influence, but then required a showing of discriminatory purpose. See White v. Register, 412 U.S. 755, 766 (1973); Bolden v. City of Mobile, 571 F.2d 238 (5th Cir. 1978), rev'd, 446 U.S. 55 (1980). Congress amended Section 2 in 1982 to restore the effects test.

¹³ In other states, Section 2 liability is usually decided by a federal judge acting on the basis of expert testimony.

¹⁴ Elections Code, Section 14028(a) requires a showing of racially polarized voting. Racially polarized voting occurs when some candidates preferred by one race or language group receive a higher level of support from that group than from the electorate at-large. This differential is inferred by comparing the vote share in precincts in which different percentages of the voters belong to the race or group in question. Proof of intentional discrimination by voters or elected officials is not required. Elections Code, Section 14028(d). To date, no jurisdiction has successfully contested an allegation of racially polarized voting.

¹⁵ In March 2018, after WCCUSD failed twice to vote to abolish at-large elections, BAVRI filed suit under Section 2. We immediately proposed a settlement, including a draft map and our agreement to delay implementation to 2020, provided the initial area trustees were elected simultaneously. At that time, less than \$20,000 in attorneys' fees had accrued. WCCUSD hired its own demographer, who claimed his first priority would be to create a majority Latino trustee area. Instead, he produced 13 maps that did not do so, many of which would have enabled El Cerrito to continue its historic ability to elect a Board majority. Earlier this month, the Board settled the action by stipulation, accepting that plaintiffs had demonstrated a majority Latino trustee area, and agreeing to a remedial map that is remarkably similar to plaintiffs' original proposal. The Court ratified this settlement, which states: "WCCUSD acknowledges that if this case were to go to trial, plaintiffs would likely prevail on their CVRA and Section 2 claims as pled in the Complaint." Ruiz-Lozito v. WCCUSD, Judgment dated March 6, 2019, Stipulation, ¶19. WCCUSD has disclosed that it spent over \$568,000 fighting trustee elections, but acknowledged that the attorneys who advised it to do so are still sending bills.

discretion in designing trustee areas.

BAVRI believes that compliance with the CVRA should be a locally-based, collaborative effort, rather than an adversary proceeding.¹⁶ To the extent consistent with the \$30,000 fee cap, we intend to support the development of mapping options once the Board resolves to make districts and receives initial feedback. This will likely avoid many of the substantial costs noted above.

To preserve its safe harbor, MDUSD must declare an intention to move to district elections within 45 days of its receipt of this letter. At this point, MDUSD can have up to 75 more days to specify its plan. There must be a series of four public hearings, two before the city presents maps and two after. Elections Code, Section 10010(a). It is generally understood that the criteria correspond to those codified for population-based reapportionments and generally for municipalities: topography; geography; cohesiveness, contiguity, integrity, and compactness of territory; and community of interest. Elections Code 22000(a); Government Code, Section 34884(a)(1) [A.B. 278 (2016)]. The mapping of trustee areas, the sequence in which trustees are elected, and other procedural change cannot have the effect of diminishing the ability of citizens of a race, color or language minority group to elect the candidates of their choice. 52 U.S.C. §10304(b).

The State Board of Education has implemented a policy of granting waivers to the requirement that districting for purposes of complying with the CVRA be submitted to the voters for approval. See Education Code, Section 33050.¹⁷ As a condition of this waiver, a school district must still obtain approval of its map from the county committee under Education Code, Section 5019(a) or 5020(d).

An action to comply with the California Voting Rights Act opens opportunities for other reforms in electoral practices and governance. Such changes might include increasing the number of board members to seven, preferably without increasing the three members elected during the low-turnout midterm election cycle.¹⁸ BAVRI does

¹⁶ Although BAVRI believes that it is illegal for a political party, employer, or other organization to discipline, coerce, or intimidate a civil rights litigant (*see* Civil Code, Section 52.1), recent actions make it necessary to defer identifying the prospective plaintiff until litigation is filed, although litigation is unnecessary and undesirable and seems unlikely to occur.

¹⁷ In the case of municipalities, special districts and community college districts, the Legislature has codified provisions that dispense with voter approval where a school board adopts a resolution changing from at-large to district elections in order to comply with the CVRA. Elections Code, Section 10650 (special districts); Government Code, Section 34886 (cities); Education Code, Section 72036 (community college district).

¹⁸ Given the large size of the jurisdiction, the public may determine that seven districts would better serve the diverse communities of interest within MDUSD. A larger board could also reduce the likelihood that any incumbent would be boxed out of an opportunity to run for reelection. Judicial approval or waiver by the State Board can dispense with the statutory requirement that voters approve such a change. Education Code, Section 5030. The California Voter Participation Rights Act, effective in 2017, encourages local jurisdictions to increase turnout by consolidating with statewide elections. Elections Code, Section 14050, et seq. Because turnout in the 2014 midterm was so abysmal, MDUSD may consider

not view any of these changes as required, but they are options the Board may consider as long as they do not disadvantage minority voters.

RACIALLY POLARIZED VOTING

As suggested above, some degree of racially polarized voting exists almost everywhere, because minorities vote differently than the rest of the electorate. Latinos care intensely about immigration. With the Asian community, Latinos also support bilingual education. The African-American community is committed to reform of the criminal justice system to a greater degree than other voters. Measure J was strongly supported in the minority community, so the 2018 election results will likely show racially polarized voting once data on the racial breakdown of voters are available. What distinguishes MDUSD from Martinez (and Martinez USD) is that MDUSD's precincts vary significantly in the extent to which they include minorities. At the time of the CVRA challenges in Martinez, no precinct had less than 11% Latino or more than 14% Latino voters by registration. This not only made racially polarized voting difficult to detect from precinct-based data. It also precluding designing districts in a manner that significantly altered the influence of Latinos as a group. MDUSD has great diversity in racial composition among its neighborhoods, which is fully reflected in precinct-based data. So creating trustee areas provides a genuine opportunity to equalize the franchise of minority communities.

The three affluent jurisdictions in which four of the five trustees reside (Clayton, Pleasant Hill, and parts of Walnut Creek) comprise less than 30% of MDUSD's total population, and only 15% of its Latino population. In the most recent contested election, residents of these three communities cast 43% of the votes in this race.

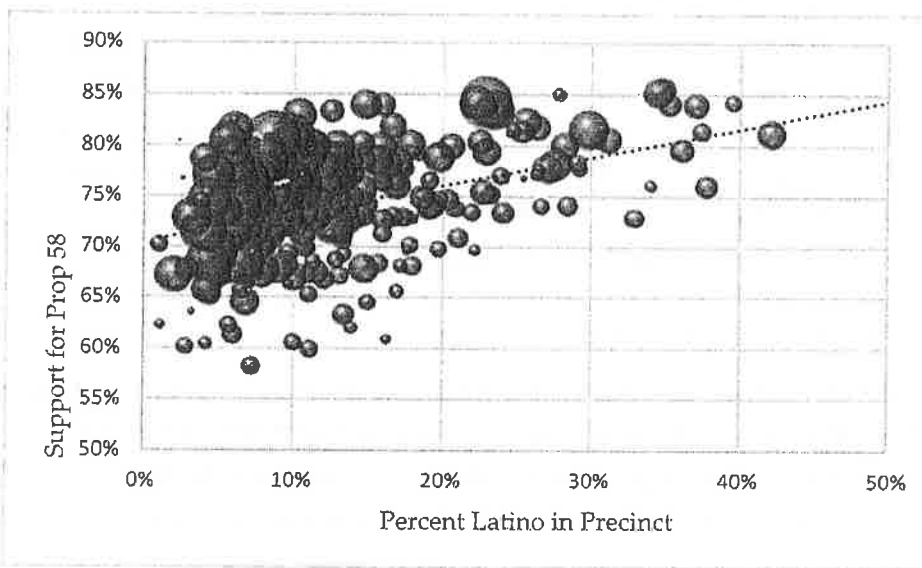
In the five contested elections since 2008, there has been only one Latino candidate and only one Asian candidate, neither of whom won. To the extent that their true candidates of choice choose not to run in a system that makes their election improbable, the minority communities may choose not to vote. The absence of minority candidates is strongly suggestive of racially polarized voting, but it can sometimes made evidence more difficult to collect from election returns.

Nonetheless, each of the last five competitive elections for MDUSD has been racially polarized from the standpoint of the Latino community. In one race, for example, an incumbent (since retired) received 35% of the White vote, but only 5% of the Latino vote. In the same race, another candidate received 27% of the Latino vote, but was defeated. Three of the five elections have been racially polarized from the standpoint of the Asian community. In other words, precincts with large numbers of

electing the majority of its members (three of five or four of seven) during the statewide general election each presidential year. This can be accomplished by electing one or two members to short terms in 2018.

minority voters have voted differently from those with few minority voters to a degree that is statistically significant. These results can be misinterpreted, and several of the affected candidates are incumbents on the Board. For this reason, petitions generally do not present evidence of racially polarized voting (although BAVRI has done so in the past).

BAVRI has also analyzed several ballot questions and exogenous races. In 2016, Proposition 58 repealed certain restrictions on bilingual education. This question was strongly supported by the entire electorate, but Latino support was even stronger. This chart is illustrative of ecological regression, one of the statistical analyses used to assess racially polarized voting. BAVRI has performed similar analyses for each MDUSD election.



Regression Statistics: Model 21 for 16pY58 (1 variable, n=288)

	R-Squared	Adj.R-Sqr.	Std.Err.Reg.	Std. Dev.	# Fitted
	0.194	0.191	0.049	0.055	288

Coefficient Estimates: Yes on 58 by Latino (1 variable, n=288)

Variable	Coefficient	Std.Err.	t-statistic	Lower95%	Upper95%
Constant	0.705	0.005303	132.966	0.695	0.716
Latino percentage of precinct	0.278	0.034	8.301	0.212	0.344

The Latino community also displayed racially polarized voting in the degree of its support for the first African-American elected to county office, District Attorney Diana Becton. Although only 44% of Whites in MDUSD precincts supported the District Attorney, 82% of Latinos in MDUSD did.

REDISTRICTING

BAVRI has been generous in providing extensions to enhance opportunities for

public comment and to increase public acceptance of the reform. However, in light of the impropriety of continuing an illegal election structure, the Legislature has now ruled out extending compliance until the after the census. AB 2123 (2018).¹⁹ Therefore, the map prepared this year will apply only to the two seats elected in 2020.

The Legislature has indicated that the trustee areas with the largest minority populations should normally elect during the presidential cycle. Elections Code, Section 10010(b).²⁰ However, BAVRI appreciates that the incumbent representing Bay Point is entitled to remain in office through 2022. It is the purpose of the CVRA to provide an equal opportunity for minority voters to influence electoral outcomes, not to disrupt any particular incumbent. We look forward to working together to resolve this issue. We also suggest considering a short term for one of the 2022 seats, so that three seats can be elected during the presidential cycle. One solution to both of these issues is to expand the size of the Board to seven trustees. *See* footnote 18, above. The only unified school districts in the Bay Area that are larger than Mt. Diablo (San Francisco, San Jose, and Oakland) all have seven trustees.

Although enrollment has not substantially increased, there has been a significant growth in population since the last census. Last month, the census released new survey data (ACS) reporting a population increase of 7 percent in the district as a whole. This is a five year average from 2012-2017; if growth has been consistent, it may only represent half of the change since 2010. The District will also experience mid-decade growth from the development of the Naval Weapons Station in Concord.

	2000	2010	2017(ACS)
Bay Point	21269	21349	21821
Concord	121822	122067	128160
Clayton	10411	10897	11838
Pleasant Hill	32825	33152	34622
Pittsburg (part)			
Martinez (part)			
Walnut Creek (part)	59828	61877	72276
Other			
DISTRICT	246155	249342	268717

SB 1019, effective this year, allows a school district to establish an independent redistricting commission, which may also be customized as part of a CVRA remedy.

¹⁹ AB 2123 “ensure[s] that such an agreement does not delay relief from a method of election that is unlawful under the CVRA.” Senate Floor Analysis at 7.

²⁰ *See* AB 350, Concurrence in Senate Amendments at 2. Similar statements are made in other parts of the legislative history.

Rafferty to MDUSD, Voting Rights Petition, page 16

WCCUSD established such a commission, which will be appointed by a federal judge. Section 23004 of the Elections Code also allows districts to contract with a commission established by the county, but some supervisors have not yet favored this approach.

CONCLUSION

MDUSD is the third largest school district in the state to retain at-large elections. The winner-take-all system discriminates against minorities, especially communities that have larger than average numbers of children and immigrants who are not yet citizens. These are precisely the constituents that most need quality schools and are entitled to the District's highest priority. In the case of MDUSD, at-large elections have also made it more difficult for the Board to engage the entire community, which may explain the District's failure to gain voter approval for the same level of revenue support as neighboring districts. Finally, the lack of representation from Concord and other communities impairs the ability of the District to reach sound and equitable policy decisions.

For all these reasons, the CVRA requires MDUSD to elect its Board by trustee area, beginning with the 2020 election.

Sincerely,

A handwritten signature in black ink that reads "Scott J. Rafferty". The signature is written in a cursive style with a large, stylized initial "S".

Scott J. Rafferty

EXHIBIT 1

DASHBOARD

School	level	street	city	zip	Grad Rate (HS)/Chronic Abs	Suspension Rate	English Language Arts
ENTIRE DISTRICT					3.5	2	3
Ayers	ELEM	5120 Myrtle Drive	Concord	94521	2	5	2
Bancroft	ELEM	2200 Parish Drive	Walnut Creek	94598	4	4	5
Bel Air	ELEM	663 Canal Road	Bay Point	94565	2	1	1
Cambridge	ELEM	1135 Lacey Lane	Concord	94520	4	2	1
College Park	HIGH	201 Viking Drive	Pleasant Hill	94523	5	2	4
Concord	HIGH	4200 Concord Boulevard	Concord	94521	4	2	2
Delta View	ELEM	2916 Rio Verde	Pittsburg	94565	2	5	2
Diablo View	MIDDLE	300 Diablo View Lane	Clayton	94517	3	2	4
El Dorado	MIDDLE	1750 West Street	Concord	94521	2	2	2
El Monte	ELEM	1400 Dina Drive	Concord	94518	2	3	3
Fair Oaks	ELEM	2400 Lisa Lane	Pleasant Hill	94523	2	3	3
Foothill	MIDDLE	2775 Cedro Lane	Walnut Creek	94598	4	4	5
Gregory Gardens	ELEM	1 Corritone Court	Pleasant Hill	94523	2	3	3
Hidden Valley	ELEM	500 Glacier Drive	Martinez	94553	4	2	4
Highlands	ELEM	1326 Pennsylvania Boulevard	Concord	94521	4	4	4
Meadow Homes	ELEM	1371 Detroit Avenue	Concord	94520	3	3	3
Monte Gardens	ELEM	3841 Larkspur Drive	Concord	94519	4	5	4
Mountain View	ELEM	1705 Thornwood Drive	Concord	94521	2	5	3
Mt. Diablo E	ELEM	5880 Mount Zion Drive	Clayton	94517	4	5	5
Mt. Diablo H	HIGH	2455 Grant Street	Concord	94520	2	2	3
Northgate	HIGH	425 Castle Rock Road	Walnut Creek	94598	5	2	4
Oak Grove	MIDDLE	2050 Minert Road	Concord	94518	2	2	1
Pine Hollow	MIDDLE	5522 Pine Hollow Road	Concord	94521	4	4	3
Pleasant Hill E	ELEM	2097 Oak Park Boulevard	Pleasant Hill	94523	4	4	4
Pleasant Hill M	MIDDLE	1 Santa Barbara Road	Pleasant Hill	9/26	2	1	4
Rio Vista	ELEM	611 Pacifica Avenue	Bay Point	94565	2	4	3
Riverview	MIDDLE	205 Pacifica Avenue	Bay Point	94565	3	1	1
Sequoia E	ELEM	277 Boyd Road	Pleasant Hill	94523	5	3	5
Sequoia M	MIDDLE	265 Boyd Road	Pleasant Hill	94523	4	2	4
Shore Acres	ELEM	351 Marina Road	Bay Point	94565	1	2	1
Silverwood	ELEM	1649 Claycord Avenue	Concord	94521	4	4	5
Strandwood	ELEM	416 Gladys Drive	Pleasant Hill	94523	4	5	4
Sun Terrace	ELEM	2448 Floyd Lane	Concord	94520	3	2	3

EXHIBIT 1

DASHBOARD

School	level	street	city	zip	Grad Rate (HS)/Chronic Abs	Suspension Rate	English Language Arts
Valhalla	ELEM	530 Kiki Drive	Pleasant Hill	94523	2	4	5
Valle Verde	ELEM	3275 Peachwillow Lane	Walnut Creek	94598	3	5	4
Valley View	MIDDLE	181 Viking Drive	Pleasant Hill	94523	2	3	3
Walnut Acres	ELEM	180 Cerezo Drive	Walnut Creek	94598	4	5	5
Westwood	ELEM	1748 West Street	Concord	94521	2	3	3
Woodside	ELEM	761 San Simeon Drive	Concord	94518	2	2	3
Wren Avenue	ELEM	3339 Wren Avenue	Concord	94519	2	5	2
Ygnacio Valley E	ELEM	2217 Chalomar Road	Concord	94518	4	4	3
Ygnacio Valley H	HIGH	755 Oak Grove Road	Concord	94518	5	4	1

EXHIBIT 1

Data compiled by GreatSchools

School	level	OVERAI	Test Scores	Academic Progress/College Readiness	Advanced Courses (HS only)	Equity Overview	enrollment	Asian	Latino	White	Asian - scc
__ENTIRE DISTRICT											
Ayers	ELEM	5	5	4		4	459	9%	35%	41%	
Bancroft	ELEM	7	8	7		5	559	17%	18%	52%	
Bel Air	ELEM	1	1	4		1	556	5%	67%	4%	
Cambridge	ELEM	1	1	2		1	692	2%	94%	1%	
College Park	HIGH	9	9	9	8	6	2013	14%	23%	54%	
Concord	HIGH	6	6	6	7	3	1555	12%	45%	33%	
Delta View	ELEM	5	5	5		4	633	33%	42%	7%	
Diablo View	MIDDLE	8	9	8		6	703	9%	17%	63%	
El Dorado	MIDDLE	2	2	3		1	983	10%	25%	48%	-
El Monte	ELEM	4	5	7		3	464	9%	49%	26%	
Fair Oaks	ELEM	3	3	3		3	359	8%	65%	12%	
Foothill	MIDDLE	9 10		8		8	1043	18%	11%	60%	
Gregory Gardens	ELEM	5	6	7		2	400	17%	35%	33%	
Hidden Valley	ELEM	6	7	6		4	837	10%	32%	42%	
Highlands	ELEM	7	7	6		6	639	13%	21%	49%	
Meadow Homes	ELEM	3	3	5		2	883	3%	89%	2%	
Monte Gardens	ELEM	9	9	7		9	554	18%	30%	40%	
Mountain View	ELEM	4	5	6		2	459	9%	40%	34%	
Mt. Diablo E	ELEM	9	9	6		6	816	9%	14%	48%	
Mt. Diablo H	HIGH	4	5	3	4	3	1307	10%	67%	8%	
Northgate	HIGH	10	9	10	9	9	1599	22%	11%	58%	
Oak Grove	MIDDLE	1	1	3		1	673	6%	83%	4%	-
Pine Hollow	MIDDLE	5	6	6		4	615	17%	32%	39%	
Pleasant Hill E	ELEM	7	8	7		6	692	10%	21%	54%	
Pleasant Hill M	MIDDLE	6	7	7		3	923	9%	36%	43%	
Rio Vista	ELEM	3	3	5		3	544	5%	78%	3%	
Riverview	MIDDLE	1	1	4		1	771	9%	54%	27%	-
Sequoia E	ELEM	9	9	7		9	530	21%	20%	47%	
Sequoia M	MIDDLE	7	8	8		4	932	20%	35%	37%	
Shore Acres	ELEM	1	1	3		1	533	2%	88%	2%	
Silverwood	ELEM	8	8	8		7	480	15%	34%	30%	
Strandwood	ELEM	8	9	8		7	652	8%	18%	61%	
Sun Terrace	ELEM	3	3	3		2	554	7%	59%	15%	

EXHIBIT 1

Data compiled by GreatSchools

School	level	OVERAI	Test Scores	Academic Progress/College Readiness	Advanced Courses (HS only)	Equity Overview	enrollment	Asian	Latino	White	Asian + scc
Valhalla	ELEM	9	9	6		9	554	14%	22%	48%	
Valle Verde	ELEM	6	8	8		3	466	16%	13%	53%	
Valley View	MIDDLE	6	4	7		1	877	16%	35%	41%	
Walnut Acres	ELEM	9	9	7		10	617	16%	10%	56%	
Westwood	ELEM	3	4	6		2	341	6%	45%	34%	
Woodside	ELEM	5	6	4		3	399	15%	34%	38%	
Wren Avenue	ELEM	4	4	5		4	531	8%	62%	18%	
Ygnacio Valley E	ELEM	2	2	3		2	468	5%	82%	6%	
Ygnacio Valley H	HIGH	4	2	4	6	2	1139	7%	72%	13%	

EXHIBIT 1

CDE 5x5 placement

School	level	st/teacher	2017 areas of substantial improvement	2018 areas of substantial improvement
__ENTIRE DISTRICT				
Ayers	ELEM	26		
Bancroft	ELEM	26		ENG
Bel Air	ELEM	27		
Cambridge	ELEM	18	SUS	
College Park	HIGH	25	EL	
Concord	HIGH	23	SUS EL	
Delta View	ELEM	30		
Diablo View	MIDDLE	23		
El Dorado	MIDDLE	24		
El Monte	ELEM	24		
Fair Oaks	ELEM	24		M
Foothill	MIDDLE	26		
Gregory Gardens	ELEM	27		
Hidden Valley	ELEM	27		
Highlands	ELEM	26		ENG
Meadow Homes	ELEM	15		
Monte Gardens	ELEM	28		
Mountain View	ELEM	22	SUS	SUS
Mt. Diablo E	ELEM	27		
Mt. Diablo H	HIGH	16		M
Northgate	HIGH	24		
Oak Grove	MIDDLE	18	SUS EL	
Pine Hollow	MIDDLE	23		
Pleasant Hill E	ELEM	23		
Pleasant Hill M	MIDDLE	24		
Rio Vista	ELEM	28		
Riverview	MIDDLE	16		ABS
Sequoia E	ELEM	28		
Sequoia M	MIDDLE	27		
Shore Acres	ELEM	27	SUS	
Silverwood	ELEM	26		ENG
Strandwood	ELEM	27	EL	
Sun Terrace	ELEM	25		

EXHIBIT 1

School	level	CDE 5x5 placement	
		st/teacher 2017 areas of substantial improvement	2018 areas of substantial improvement
Valhalla	ELEM	27 EL	
Valle Verde	ELEM	24	
Valley View	MIDDLE	22	
Walnut Acres	ELEM	25 EL	
Westwood	ELEM	19 SUS	ENG
Woodside	ELEM	25	
Wren Avenue	ELEM	26 EL	SUS
Ygnacio Valley E	ELEM	18	
Ygnacio Valley H	HIGH	21	SUS GRAD