

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education November 2022 Agenda Item #10

## Subject

Appeal from an Action of the Orange County Committee on School District Organization to Approve a Petition to Transfer Territory from the Orange Unified School District to the Tustin Unified School District.

## Type of Action

Action, Information, Public Hearing

## Summary of the Issue(s)

The Orange County Committee on School District Organization (County Committee) approved a petition to transfer territory from the Orange Unified School District (USD) to the Tustin USD. The Orange USD submitted an appeal to the California State Board of Education (SBE) from this County Committee action pursuant to California *Education Code* (*EC*) Section 35710.5.

The SBE may affirm or reverse the County Committee’s decision to approve the territory transfer proposal. If the SBE affirms the County Committee’s action, thus approving the territory transfer, it must establish the election area for final voter approval of the proposal (*EC* Section 35756).

## Recommendation

The California Department of Education (CDE) recommends that the SBE affirm the decision of the County Committee to approve the proposal to transfer territory from the Orange USD to the Tustin USD. Regarding the election required to finalize the transfer, the CDE further recommends that the SBE not expand the area for the election beyond the territory proposed for transfer.

## Brief History of Key Issues

The Orange County Superintendent of Schools (County Superintendent) received a petition signed by at least 25 percent of the voters residing in the Panorama Heights area of North Tustin—North Tustin is an unincorporated community and a Census-Designated Place in Orange County. The proposed transfer area contained 459 single family residences at the time the appeal was submitted, 127 students (22 whom already attend Tustin USD on interdistrict transfer agreements), and is within the boundaries of the Orange USD. Petitioners request transfer of these parcels to the Tustin USD for the following reasons:

* The entire proposed transfer area is covered by the North Tustin Advisory Council and the Foothill Community Association. The majority of North Tustin already is within the boundaries of the Tustin USD.
* Half of Panorama Heights already is within the Tustin USD—the current omission of the proposed transfer area creates an arbitrary division of the neighborhood.
* Many children from the area attend Tustin USD on interdistrict transfer permits.
* The primary faith, sports, and activity organizations in which children of Panorama Heights participate are based in the Tustin area.
* The current proposal follows a successful petition to transfer another North Tustin area from the Orange USD to the Tustin USD in 2012.

After conducting public hearings in each affected school district, the County Committee determined that all of the nine minimum threshold conditions of *EC* Section 35753(a) are substantially met.[[1]](#footnote-1) The County Committee subsequently voted 8-1 (with two members absent) to approve the territory transfer proposal. Pursuant to *EC* Section 35710.5, the Orange USD submitted an appeal from this County Committee action. The district identified the following reasons for the appeal:

* Petitioners have not proven a sense of community identity with the Tustin USD.
* The transfer would promote racial/ethnic segregation and impede the Orange USD’s ability to educate its students in an integrated environment.
* The loss of students due to the transfer would negatively affect the educational programs at the Panorama Elementary School.
* The petitioners’ primary purpose for the transfer petition is to increase the property values of their homes.
* The loss of students and assessed valuation, due to the territory transfer, would exacerbate declining enrollment in the Orange USD; and reduce state funding and the district’s bonding capacity.

The CDE reviewed the entire administrative record provided by the County Superintendent including minutes, transcripts, and audio-recordings of public hearings and meetings—as well as new information requested and received from the County Superintendent and the affected school districts (pursuant to *EC* Section 35751). After this review, the CDE completed an analysis of the proposed territory transfer and the subsequent appeal. The complete analysis and resultant recommendations are contained in attachment 1.

## CDE Findings and Recommendations

Below is a summary of the CDE’s findings and recommendations from attachment 1:

1. All minimum threshold standards of *EC* Section 35753 are substantially met. In general, it is the determination of the CDE that the loss of a relatively small number of students (approximately 100 students from a district with over 26,000 students—less than half of a percent of the district population) and small size of the transfer area (less than one percent of the Orange USD assessed valuation) would not have significant negative effects on the Orange USD.
2. Although the CDE finds no compelling reason to transfer the territory, it also finds no concerns compelling enough to reverse the County Committee’s approval of the territory transfer. The CDE gives significant weight to the discretionary authority of a county committee in these matters, since it is in a better position to understand the local educational needs and concerns of the districts and communities affected.

Based on these findings, the CDE recommends that the SBE affirm the decision of the County Committee to approve the proposal to transfer territory from the Orange USD to the Tustin USD. Regarding the election required to finalize the transfer, the CDE further recommends that the SBE not expand the area for the election beyond the territory proposed for transfer. This recommendation is consistent with the County Committee’s action to establish the election area as the territory proposed for transfer.

## Summary of Previous State Board of Education Discussion and Action

The SBE has not addressed a reorganization matter involving the Orange USD and the Tustin USD for at least 28 years (the entirety of CDE records). At its May 2013 meeting, the SBE affirmed the Orange County Committee’s action to disapprove a transfer of territory from the Orange USD to the Saddleback Valley USD.

## Fiscal Analysis (as appropriate)

Affirming the action of the County Committee requires the County Superintendent to call an election for the proposed territory transfer. Costs for this election will depend upon the timing of the election, the type of election, and the size of the election area established by the SBE—election costs will be borne by the county.

## Attachments

**Attachment 1**: Analysis of Administrative Record (34 pages)

**Attachment 2**: Maps of North Tustin and School District Boundary Lines (4 pages)

# ATTACHMENT 1 Analysis of Administrative Record

**Appeal from an Action of the  
Orange County Committee on School District Organization  
to Approve a Petition to Transfer Territory from the  
Orange Unified School District to the  
Tustin Unified School District**

## 1.0 Recommendation

The California Department of Education (CDE) recommends that the California State Board of Education (SBE) affirm the decision of the Orange County Committee on School District Organization (County Committee) to approve the proposal to transfer territory from the Orange Unified School District (USD) to the Tustin USD. Regarding the election required to finalize the transfer, the CDE further recommends that the SBE not expand the area for the election beyond the territory proposed for transfer.

## 2.0 Background

### 2.1 Affected Districts

According to 2021–22 data from the California Longitudinal Pupil Achievement Data System (CALPADS), the Orange USD serves 26,756 kindergarten through twelfth grade (K-12) students, while the Tustin USD has 22,140 students in those same grade levels. The percentages of students in select CALPADS categories are displayed in table 1.

***Table 1: Percent Race/Ethnicity in Affected Districts (2021–22*** ***CALPADS)***

| District\* | Asian | Hispanic or Latino | White | Other\*\* |
| --- | --- | --- | --- | --- |
| Orange USD  (K-12 enrollment: 26,422) | 10.1% | 57.5% | 25.2% | 7.2% |
| Tustin USD  (K-12 enrollment: 22,056) | 21.4% | 47.0% | 21.7% | 9.9% |

*\* Students in the “Not Reported” CALPADS category are excluded from   
the enrollment figures and are omitted from all calculations for this table.*

\*\* *The “Other” category includes “African American,” “American Indian or  
Alaska Native,” “Filipino,” “Pacific Islander,” and “Two or More.”*

Select 2021–22 CALPADS socio-economic data (English Learner [EL] and Free or Reduced-Price Meal [FRPM]) for each affected district is shown in table 2 below:

***Table 2: Percent Students in Select CALPADS Programs***

| District | EL | FRPM |
| --- | --- | --- |
| Orange USD  (K-12 enrollment: 26,422) | 18.0% | 38.8% |
| Tustin USD  (K-12 enrollment: 22,056) | 17.1% | 33.3% |

### 2.2 Territory Transfer Proposal

The proposed transfer area is part of a community locally known as Panorama Heights, which is within North Tustin (in unincorporated territory of Orange County).

The territory contained 459 parcels and 127 K-12 students, with 22 of these students attending Tustin USD on inter-district transfer permits for the 2022–23 school-year. Over the past few years, an average of 21 students attended the Tustin USD on inter-district transfers. The area represents approximately 0.41 percent of the total Orange USD enrollment and 0.9 percent of the total assessed valuation (AV) of the district.

Maps, which show the proposed transfer area in relation to the boundary line between the Orange USD and the Tustin USD, are included in section 7.1 of this attachment and in attachment 2.

### 2.3 Petitioner Reasons for Transfer

In the petition submitted to the Orange County Superintendent of Schools (County Superintendent), the following reasons for the proposed transfer of territory were included:

* The entire proposed transfer area is covered by the North Tustin Advisory Council and the Foothill Community Association, the local political advisory groups that protect the rights and interests of "North Tustin" residents in 4,600 acres of Orange County unincorporated area.
* The current petition addresses a concern raised by the County Committee, when it disapproved a previous proposal to transfer territory containing the current transfer area, that “geographic islands” were created. The petition now includes additional neighborhoods in North Tustin to avoid these “islands.”
* Half of Panorama Heights already is within the Tustin USD—the current omission of the proposed transfer area creates an arbitrary division of the neighborhood.
* Many children in the area already attend Tustin USD on interdistrict transfer permits.
* The primary faith, sports, and activity organizations, in which children of Panorama Heights participate, are based in the Tustin area.
* The current proposal follows a successful 2012 petition to transfer another North Tustin area (Rocking Horse Ridge) from the Orange USD to the Tustin USD.

### 2.4 Previous Territory Transfers

As noted above, the County Committee, in 2012, approved a proposal to transfer a portion of North Tustin from the Orange USD to the Tustin USD. Rocking Horse Ridge was a new residential development, with the school district boundary line splitting the development in half. The half that was in the Orange USD was transferred to the Tustin USD. At the time of the transfer, 43 students resided in the Orange USD portion of Rocking Horse Ridge.

The Rocking Horse Ridge development is located approximately a two- and a half mile drive east of the Panorama Heights neighborhood. The approved Rocking Horse Ridge transfer area is depicted in figure 1 of attachment 2, and shows the relative locations of these two neighborhoods.

## 3.0 Action of the County Committee

The County Committee held two public hearings for the proposed transfer of territory—one within the boundaries of the Orange USD and one within the boundaries of the Tustin USD. Following these hearings, the County Committee had the following options pursuant to the California *Education Code* (*EC)*:

* If the County Committee determined that all nine minimum threshold standards of *EC*Section 35753(a) are substantially met, it could approve the petition (though not required to do so).
* The County Committee could disapprove the petition to transfer territory for other concerns even if it finds that all nine conditions of *EC* Section 35753(a) have been substantially met.
* If the County Committee determined that all nine minimum threshold standards of *EC*Section 35753(a) are not substantially met, it would be required to disapprove the petition.

The County Committee determined that that all nine minimum threshold standards of *EC*Section 35753(a) are substantially met, and subsequently approved the transfer (on an 8-1 vote, with two members absent).

Chief petitioners or affected school districts may appeal County Committee decisions on territory transfers for issues of noncompliance with the provisions of *EC* sections 35705, 35706, 35709, 35710, and 35753(a). The Orange USD submitted such an appeal to the County Superintendent, who subsequently transmitted the appeal, along with the complete administrative record of the County Committee action, to the SBE.

## 4.0 Positions of Affected School Districts

### 4.1 Orange USD

The Orange USD is opposed to the transfer of territory proposal and is the appellant in this matter. As such, the district’s positions are contained in section 5.0 of this attachment (Reasons for the Appeal).

### 4.2 Tustin USD

The Tustin USD has maintained a “neutral” position regarding the proposed territory transfer, stating only that it is able to place students from the proposed transfer area within its existing schools.

## 5.0 Reasons for the Appeal

The Orange USD appeal is based on its determination that the transfer because it fails to substantially meet the following *EC* Section 35753(a) minimum standards:

### 5.1 Community Identity

The Orange USD argues that the territory proposed for transfer does not demonstrate a substantial community identity with the Tustin USD for a number of reasons, including the following:

* The territory is part of a large island of unincorporated Orange County territory served by both the Orange USD and the Tustin USD. The proposed transfer area does not include all of the unincorporated territory served by the Orange USD—thus, that territory will remain divided by the school district boundary line.
* The vast majority of students in the proposed transfer area attend the Orange USD, with fewer than 20 percent attending the Tustin USD through interdistrict transfer agreements.
* The closest elementary school to the proposed transfer area is the Orange USD’s Panorama Elementary School.
* The proposed transfer area has stronger connections to the city of Orange than to the city of Tustin—including commercial business and library services.

### 5.2 Integrated Environment for Education

The Orange USD states that the Orange USD schools serving the proposed transfer area contain greater percentages of Hispanic/Latino students and students who are socioeconomically disadvantaged, EL, and eligible for the FRPM program.

### 5.3 Educational Programs

The Orange USD notes that, if the territory is transferred, the Panorama Elementary School (the second smallest elementary school in the district) will lose a significant portion of its enrollment. This enrollment loss would result in (1) a need to institute combination classrooms; (2) a reduction in staff; and (3) decreased parental involvement with the school.

### 5.4 Increased Property Values

The Orange USD obtained independent real estate appraisals indicating that the value of Panorama Heights homes that are within the Orange USD are almost 18 percent lower than comparable homes in the Tustin USD.

### 5.5 Financial Effects

The Orange USD claims that enrollment in the district has been declining for many years, while Tustin USD enrollment has increased over the same period. If approved, the proposed territory transfer will:

* Exacerbate the declining enrollment trend in the Orange USD;
* Reduce state funding (due to the loss of average daily attendance [ADA]); and
* Reduce school district bonding capacity due to loss of AV.

## 6.0 CDE Analysis of *Education Code* Section 35753

CDE staff reviewed the administrative record provided by the County Superintendent, which details (1) responses to the proposed transfer from the affected school districts, (2) the County Committee actions during its consideration of the *EC* Section 35753 threshold conditions, and (3) the concerns raised in the appeal regarding the County Committee’s actions. It is noted that the County Superintendent did not prepare an analysis of the proposed territory transfer for the County Committee’s consideration—therefore, interpretation and discussion of the actions of the County Committee are drawn from transcriptions and audio-recordings of the County Committee’s meetings.

That courts have established that the *EC* Section 35753 conditions are minimum threshold requirements for a school district reorganization (*Hamilton v. State Board of Education* [1981] 117 Cal.App.3d 132) (*Hamilton v. SBE*). The County Committee (and the SBE) are required to determine if these minimum standards are substantially met before taking any discretionary action to approve a reorganization (*EC* sections 35709, 35710, and 35753).

As noted in previous sections of this attachment, the County Committee determined that all *EC* Section 35753 minimum threshold standards are substantially met in this territory transfer proposal. The Orange USD appeal claims that five of these nine standards are not substantially met—those five conditions (listed below and in section 5.0 of this attachment) are the CDE’s focus:

* *EC* Section 35753(a)(2): The school districts are each organized on the basis of a substantial community identity.
* *EC* Section 35753(a)(4): The reorganization of the school districts will preserve each affected district’s ability to educate pupils in an integrated environment and will not promote racial or ethnic discrimination or segregation.
* *EC* Section 35753(a)(6): The proposed reorganization will continue to promote sound education performance and will not significantly disrupt the educational programs in the affected districts.
* *EC* Section 35753(a)(8): The proposed reorganization is primarily designed for purposes other than to significantly increase property values.
* *EC* Section 35753(a)(9): The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the affected district.

The Orange USD also includes, in the appeal, its objection to the County Committee’s action regarding establishment of an election area as required by *EC* Section 35710[a]). The County Committee determined that only voters residing in the territory proposed for transfer would participate in the election to approve the transfer (this is the default election area provided in *EC* Section 35732). The Orange USD believes the election area should be expanded to include all Orange USD voters. Since the SBE is required to determine the area of election whenever its action on an appeal results in a territory transfer moving forward (*EC* Section 35756), the election area issue will be considered in section 8.0 of this attachment.

*EC* sections 35751 and 35754 require the CDE to complete a study of all proposed school district reorganizations that are before the SBE, and present its findings and recommendations prior to SBE action on a reorganization proposal. The remainder of this attachment is devoted to those requirements.

### 6.1 Substantial Community Identity

*EC* Section 35753(a)(2): *The school districts are each organized on the basis of a substantial community identity.* SBE regulations (Title 5, *California Code of Regulations* [5 *CCR*] Section 18573[a][2]) regarding this “community identity” condition are identified in the following Standard of Review.

#### Standard of Review

5 *CCR* Section 18573(a)(2): *To determine whether the new district is organized on the basis of substantial community identity, the following criteria should be considered: isolation; geography; distance between social centers; distance between school centers; topography; weather; community, school, and social ties and other circumstances peculiar to the area.*

#### Position of Petitioners

All of the reasons provided in the territory transfer petition (see section 2.3 of this attachment) focus on issues related to the community identity of the proposed transfer area with both unincorporated North Tustin and the Tustin USD. In summary, petitioners note that (1) almost all of North Tustin territory already is in the Tustin USD; (2) many of the petition-area students attend Tustin USD on interdistrict attendance agreements; and (3) petition-area residents primarily participate in Tustin-area activities and organizations.

Petitioners also reference a previous transfer of North Tustin territory from the Orange USD to the Tustin USD that was approved by the County Committee (see section 2.4 of this attachment).

#### Position of Appellant

As described in section 5.1 of this attachment, the Orange USD, as the appellant, argues that the territory proposed for transfer does not demonstrate a substantial community identity with the Tustin USD for a number of reasons, including (1) additional North Tustin territory would remain in the Orange USD, even with the transfer; (2) fewer than 20 percent of the students in the proposed transfer area attend Tustin USD on interdistrict transfers; (3) the closest elementary school is an Orange USD school; and (4) there are stronger connections to city of Orange than to the city of Tustin.

#### County Committee Action

Members of the County Committee listened to the positions of both the petitioners and the Orange USD before voting 8-1 (with two members absent) to approve a motion that the “community identity” condition is substantially met. During discussion of the motion, a number of County Committee members made clear their beliefs that residents of the proposed transfer area identify very strongly with the Tustin USD and are closely involved with the North Tustin area.

However, comments from County Committee members also were made regarding the possibility of future transfer requests from the remaining North Tustin territory in the Orange USD—including the potential transfer of Orange USD’s Panorama Elementary School (located in North Tustin territory and adjacent to the current proposed transfer area).

#### CDE Findings/Conclusion

In their consideration of this condition, petitioners, appellants, and County Committee members focused on the community identity of residents of the proposed transfer area with the Orange USD, the Tustin USD, the city of Orange, the city of Tustin, or the North Tustin unincorporated area. It is the opinion of CDE staff that analysis of this condition is not a contest to decide which school district is a better community identity fit for the residents of a proposed transfer area. The focus of the “community identity” condition, as a minimum threshold requirement, is that the proposed reorganization does not negatively affect the community identity of the districts. CDE further notes that staff from the Orange County Department of Education (DOE) attempted to refocus members of the County Committee toward this requirement, during discussion of the condition, by stating: “The criteria isn’t about looking at how the petitioners identify—it’s whether the proposed transfer of territory will result in each of the school districts being organized on the basis of substantial community identity.” However, in section 7.0 of this attachment, the CDE will address some of the “community identity” issues discussed locally, specifically: petitioners’ sense of community identity and potential for additional territory transfers.

Both the Orange USD and the Tustin USD are geographically large districts, and each serves a variety of neighborhoods and municipalities. In the CDE’s opinion, the unincorporated area of the county, of which the proposed transfer area and North Tustin are a part, is not a clearly identified geographic area (see section 7.1 of this attachment and attachment 2 for further discussion of this lack of clarity). Appellants appear to support this CDE opinion by stating, in their appeal regarding the North Tustin area, that: “The mailing designation includes Santa Ana 92705, Panorama Heights 92705, North Tustin 92705 or other local designations such as Cowan Heights or Lemon Heights or simply CA 92705.” Appellants further note that “there is no City of North Tustin. Rather, designations such as Santa Ana 92705, North Tustin 92705, Panorama Heights 92705 etc., are a series of common local designations for this area of unincorporated territory.”

Currently, the largest portion of this unincorporated territory is within the boundaries of the Tustin USD. The proposed territory transfer would move an additional portion of the unincorporated area out of the Orange USD and into the Tustin USD. Given the geographic size of the districts and the multiple designations by which this unincorporated territory is locally known, the CDE finds:

* A relatively minor adjustment in the amount of North Tustin territory in each of the affected school districts would be inconsequential to district “community identity”—there is no reason that the proposed territory transfer would significantly affect the *CCR* criteria established for this condition.
* The proposed territory transfer substantially meets the “community identity” standard.

### 6.2 Education in an Integrated Environment

*EC* Section 35753(a)(4): *The reorganization of the school districts will preserve each affected district’s ability to educate pupils in an integrated environment and will not promote racial or ethnic discrimination or segregation.* SBE regulations (5 *CCR* Section 18573[a][2]) regarding this “integrated environment” condition are identified in the following Standard of Review.

#### Standard of Review

5 *CCR* Section 18573(a)(4): *To determine whether the new districts will promote racial or ethnic discrimination or segregation, the effects of the following factors will be considered:*

*(A) The current number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts, compared with the number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts if the proposal or petition were approved.*

*(B) The trends and rates of present and possible future growth or change in the total population in the districts affected, in each racial and ethnic group within the total district, and in each school, of the affected districts.*

*(C) The school board policies regarding methods of preventing racial and ethnic segregation in the affected districts and the effect of the proposal or petition on any desegregation plan or program of the affected districts, whether voluntary or court ordered, designed to prevent or to alleviate racial or ethnic discrimination or segregation.*

*(D) The effect of factors such as distance between schools and attendance centers, terrain, and geographic features that may involve safety hazards to pupils, capacity of schools, and related conditions or circumstances that may have an effect on the feasibility of integration of the affected schools.*

*(E) The effect of the proposal on the duty of the governing board of each of the affected districts to take steps, insofar as reasonably feasible, to alleviate segregation of minority pupils in schools regardless of its cause.*

#### Position of Petitioners

Petitioners note that students in the area proposed for transfer represent 0.33 percent of the enrollment of the Orange USD. Transfer of such a small number of students will have no effect on the demographic composition of either affected school district.

#### Position of Appellant

The Orange USD, as the appellant, argues that approval of the proposed territory transfer will have a substantial negative effect on the ability of the district, in general, and the affected schools in the district, in particular, to educate students in an integrated environment. The district notes that the Orange USD, districtwide, has a significantly greater percentage of Hispanic/Latino students than does the Tustin USD (55 percent versus 46.7 percent, at the time the appeal was submitted to the SBE).

The district further states that this negative effect is even greater when comparing the individual schools that would be affected by the transfer. Table 3 displays the information provided in the appeal to make these comparisons.

***Table 3: Percent Race/Ethnicity in Affected Schools***

| District\* | School | Hispanic or Latino | White |
| --- | --- | --- | --- |
| Orange USD | **Panorama Elementary** | 25.7% | 55.1% |
| Tustin USD | **Arroyo Elementary** | 15.6% | 62.3% |
| Orange USD | **Santiago Middle** | 67.0% | 20.5% |
| Tustin USD | **Hewes Middle** | 33.1% | 53.7% |
| Orange USD | **El Modena High** | 63.7% | 25.4% |
| Tustin USD | **Foothill High** | 42.7% | 45.5% |

*Source: Orange USD appeal document, December 2017.*

In its appeal document, the Orange USD provides no data to demonstrate how the proposed territory transfer would substantially change the percentages listed in the above table. The entire argument, in the appeal, appears to be based on the existing differences between the district and the sets of affected schools.

Orange USD also notes that the schools differ in other demographic respects such as the percentage of EL students and student eligible for the FRPM program. This issue is not relevant to consideration of this minimum standard and will be addressed in more detail in section 7.2 of this attachment.

#### County Committee Action

Again, no information regarding this standard was presented to the County Committee by the Orange DOE. Analysis of the County Committee’s action is based solely on the audio-recordings and transcripts of the meetings provided by the Orange DOE as part of the administrative record for the appeal.

After considering information provided by both the chief petitioners and the Orange USD, the County Committee voted 8-1 (with two members absent) to approve a motion that the “integrated environment” condition is substantially met. During discussion of the motion, some County Committee members expressed concerns, noting that the overall demographic differences between the districts were a “little troubling.” Members further commented that the proposed transfer, if approved, probably would move those numbers in the “wrong” direction—but, not by a substantial degree.

#### CDE Findings/Conclusion

The CDE notes that the percentages of students classified as Hispanic/Latino and White have not changed significantly from the time the Orange USD submitted its appeal to 2021–22, the most current year available from CALPADS. There remains a greater percentage of Hispanic/Latino students, districtwide, in the Orange USD than in the Tustin USD (57.5 percent versus 47 percent). Moreover, the school comparisons also remain similar (see table 4)—in all cases, at both districts and all schools, the percentage of Hispanic/Latino students has increased and the percentage of White students has decreased.

***Table 4: Current Percent Race/Ethnicity in Affected Schools***

| District | School | Hispanic or Latino | White |
| --- | --- | --- | --- |
| Orange USD | **Panorama Elementary** | 35.0% | 45.6% |
| Tustin USD | **Arroyo Elementary** | 21.1% | 47.7% |
| Orange USD | **Santiago Middle** | 70.3% | 18.2% |
| Tustin USD | **Hewes Middle** | 38.0% | 45.0% |
| Orange USD | **El Modena High** | 67.6% | 22.5% |
| Tustin USD | **Foothill High** | 42.6% | 41.0% |

*Source: 2021–22 CALPADS.*

Based on information provided by the Orange USD, the student population in the proposed transfer area is 24.4 percent Asian, 32.3 percent Hispanic/Latino, and 37.8 percent White. Using those percentages, the CDE calculated the effect on the demographic composition of students at the Panorama Elementary School (ES) if the territory transfer is approved—again, Panorama ES is the second smallest school in the Orange USD (according to the district).

***Table 5: Percent Race/Ethnicity in Panorama Elementary School***

| Elementary School | Asian | Hispanic or Latino | White | Other |
| --- | --- | --- | --- | --- |
| Panorama  (2021–22 CALPADS\*) | 8.9% | 35.4% | 46.1% | 9.7% |
| *Panorama*  *(if transfer is approved)* | *6.5%* | *35.8%* | *47.3%* | *10.3%* |

*\* Students in the “Not Reported” CALPADS category are excluded from   
the enrollment figures and are omitted from all calculations for this table.*

As can be seen in the preceding table, approval of the proposed territory transfer would increase the percentage of Hispanic/Latino students at the Panorama Elementary School slightly, while slightly decreasing the percentage of students in all other racial/ethnic categories. The CDE does not find these changes to be substantial. Given the larger number of students at the middle and high schools, similar changes at those schools would be even less substantial—thus, those changes are not included in the above table.

The territory transfer, if approved, would only change the percentages of students in the various racial/ethnic categories by tenths of a percentage point—for example, at Santiago Middle School, the transfer would increase the percentage of Hispanic/Latino students from 70.8% to 71.4% and decrease White students from 18.3% to 18.0%; while at El Modena High School, Hispanic/Latino students would increase from 68.4% to 68.9% and White students would decrease from 22.8% to 22.6%.

The CDE agrees with the County Committee’s finding that removal of the students from the proposed transfer area would not (1) promote racial or ethnic segregation or (2) effect the ability of any affected school to educate students in an integrated environment. Specifically, the CDE agrees with the opinions expressed by County Committee members that the transfer would not change the racial/ethnic composition of the districts or its schools by a “substantial degree.” The transfer of approximately 100 students (regardless of race or ethnicity) out of a district with over 26,000 students would not have a significant negative effect on the ability of the district to educate its students in an integrated environment. Similarly, the small changes at the school level (as reported in the previous paragraphs) would have no significant negative effect on the abilities of the schools to do the same.

The CDE recommends that this “integrated environment” condition is substantially met.

### 6.3 Negative Effect on Educational Programs

*EC* Section 35753(a)(6): *The proposed reorganization will continue to promote sound education performance and will not significantly disrupt the educational programs in the affected districts.*

#### Standard of Review

5 *CCR* Section 18573(a)(5): *The proposal or petition shall not significantly adversely affect the educational programs of districts affected by the proposal or petition. In analyzing the proposal or petition, the California Department of Education shall describe the districtwide programs and the school site programs in schools not a part of the proposal or petition that will be adversely affected by the proposal or petition.*

In addition to the SBE-adopted regulations regarding this criterion, the *School District Organization Handbook[[2]](#footnote-2)* provides the following recommendation:

Although it is difficult to accurately predict the changes that would occur in the educational program as a result of district reorganization, there are indicators that would be helpful to consider in reviewing reorganizations.

a. Many schools take part in a program quality review once every three years.

b. Most high schools participate in an accreditation review conducted at least every six years by the Western Association of Schools and Colleges.

c. In determining program quality, a committee would do well to consider a wide array of data. For high schools these indicators range from the number of Advanced Placement courses offered by the district to the dropout rate.

d. Although past performance does not always predict future achievements, the academic track record of a district should certainly be considered when reviewing a school district reorganization.

#### Position of Petitioners

Petitioners note that students in the proposed transfer area represent 0.33 percent of the enrollment of the Orange USD. Transfer of such a small number of students will have no effect on the educational programs of the districts or the affected schools.

#### Position of Appellant

The Orange USD, as the appellant, states that the territory transfer would result in the loss of almost 13 percent of the students at the Panorama Elementary School, which already is the second smallest elementary school in the district. This loss of students would (1) lead to a reduction in staff at the school; (2) require the introduction of grade-level combination classes; and (3) reduce parental participation at the Panorama Elementary School. The district also notes that removal of students from the middle and high school will require a corresponding reduction in staff at those schools and will have an adverse impact on parental involvement.

#### County Committee Action

After considering information provided by both the chief petitioners and the Orange USD, the County Committee voted 6-3 (with two members absent) to approve a motion that this “educational program” condition is substantially met. During discussion of the motion, some County Committee members expressed concerns regarding the effects on the Panorama Elementary School and stated that there was not any information on the potential effects at the middle and high school levels to consider. However, members also questioned what the actual effect on the elementary school would be, given the proximity of the Panorama School to the proposed transfer area and the potential for interdistrict transfer agreements to allow students to remain at that school.

#### CDE Findings/Conclusion

The Orange USD provided, in its appeal materials, significant information regarding the exemplary and innovative educational programs provided in the district—including identification of a number of award-winning schools (seven Gold Ribbon and Distinguished secondary schools, 19 elementary Gold Ribbon schools, and the designation of El Modena High School as the best public high school in Orange County by *Parenting Orange County* magazine). The district also notes that chief petitioners or residents of the proposed transfer area do not complain about the quality of the Orange USD schools or the educational programs provided in those schools.

Based the most recent results of California's accountability and continuous improvement system (for the 2019–20 academic year), CDE staff agrees with the academic quality assessments for the Orange USD. This system uses five color-coded performance levels to measure academic accountability and improvement. Those five levels, in order, are: blue (highest), green, yellow, orange, and red (lowest). Districtwide results for the English Language Arts (ELA), Mathematics (Math), Graduation Rate, and College/Career indicators show that both the Orange USD and the Tustin USD placed at the “green” level for each of the indicators, with the following exception: Tustin USD placed at the “yellow” level for the College/Career indicator. Results for the affected schools in the districts on the four indicators are displayed in table 6.

***Table 6: Select 2019–20 School Results for Accountability Indicators***

| School | District | ELA | Math | Graduation Rate | College/ Career |
| --- | --- | --- | --- | --- | --- |
| Panorama ES | Orange USD | Blue | Blue | N/A | N/A |
| Arroyo ES | Tustin USD | Blue | Green | N/A | N/A |
| Santiago MS | Orange USD | Orange | Orange | N/A | N/A |
| Hewes MS | Tustin USD | Green | Green | N/A | N/A |
| El Modena HS | Orange USD | Yellow | Orange | Blue | Blue |
| Foothill HS | Tustin USD | Green | Yellow | Blue | Green |

Although the Orange USD has identified general concerns regarding the loss of enrollment due to a potential territory transfer (staffing reductions at schools; diminished parental involvement), it does not identify or describe any specific educational programs that would be substantially affected by the transfer. The CDE also does not find that the loss of approximately 100 students from a district of over 26,000 students would have a substantial negative effect on any district or school educational program.

Even at the Panorama Elementary School, which likely would experience the largest impact from the territory transfer (approximately 50 affected students), the CDE does not believe that the territory transfer would substantially affect educational programs at the school. It is the CDE’s opinion that any loss of students from the school would be gradual and occur over a period of years, especially given the proximity of the Panorama Elementary School to the proposed transfer area, the school’s high academic performance (see table 6), and the significant likelihood that interdistrict transfers would be readily available to the affected students. It is the CDE’s experience that, after territory transfer such as this, parents do not immediately pull their students out of the schools they are attending; thus, breaking the relationships that students have developed with teachers and classmates. Moreover, CDE staff members are unaware of any prior instance where districts prohibited students affected by a territory transfer from continuing to attend the school in which they were enrolled prior to the transfer. It is the CDE’s belief that this gradual loss of students will provide the Orange USD time to adapt to the potential loss of elementary students from the proposed transfer area.

The CDE agrees with the determination of the County Committee that the proposed transfer of territory would not have substantial negative effects on the educational programs of any affected school or school district. Again, the loss of approximately 100 students from a district of over 26,000 students would not negatively affect the district’s (or any school’s) educational program—especially with the expectation that the loss of students would occur over a multiyear period.

### 6.4 Increased Property Values

*EC* Section 35753(a)(8): *The proposed reorganization is primarily designed for purposes other than to significantly increase property values.*

#### Standard of Review

Although the SBE has adopted no regulations regarding this condition, the *School District Organization Handbook* recommends that the rationale given in the petition for the territory transfer should be analyzed. If the petitioners’ rationale for the transfer appears questionable or not compelling, the county committee should at least consider whether increased property values might be the primary reason for the petition. The county tax assessor’s office or local real estate firms could be consulted for advice on whether territory transfers might have an impact on property values.

#### Position of Petitioners

Petitioners state that the purpose for the transfer is to unify the North Tustin neighborhood so that transfer-area students can attend the same schools as other students in the community.

#### Position of Appellant

The Orange USD, as the appellant, presented studies, prepared by independent real estate appraisal firms, of home value comparisons in the Orange USD and the Tustin USD. These studies conclude that homes in the Orange USD sell for about 18 percent less, and take longer to sell, than comparable homes in the Tustin USD. The Orange USD notes that, in the appraisers’ opinions, these differences primarily are due to the “superior appeal” of the Tustin USD. The Orange USD concludes that “increasing property values is a motivating factor in the proposed territory transfer.”

#### County Committee Action

Following a motion that this “increased property values” condition is substantially met, there was no discussion among County Committees regarding any issues or concerns with this threshold condition. The County Committee voted 8-1 (with two members absent) to approve the motion.

#### CDE Findings/Conclusion

For purposes of analysis of this minimum standard, the CDE accepts the finding from the appraisals presented by the Orange USD that values of homes in the district are lower than values of comparable homes in the Tustin USD. However, that is not the focus of this condition—*EC* Section 35753(a)(8) requires that the County Committee (or the SBE) find that the territory transfer proposal is **primarily** designed to increase the property values of the petitioners as a requisite for determining that this condition is not substantially met.

The CDE notes that there is no documentation in the administrative record (from any source, including the Orange USD) providing any evidence that the proposed territory transfer is **primarily** designed to increase property values—which is the minimum threshold standard under review here. Petitioners clearly state that the primary purpose for the proposed transfer is to unify their neighborhood with others in the North Tustin area. Equally clear to the CDE are the statements from County Committee members that they agree with the petitioners’ assertions. This understanding is strengthened further by the lack of any concerns raised by County Committee members when they voted on the motion that this “increased property values” condition is substantially met. Even the Orange USD, in its appeal, refers to a potential property value increase as only a “motivating factor.”

The CDE agrees with the determination of the County Committee that the proposed transfer of territory is primarily designed for purposes other than to significantly increase property values.

### 6.5 Negative Financial Effect

*EC* Section 35753(a)(9): *The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the affected district.*

#### Standard of Review

There are no regulations on this subject; however, the criteria and standards adopted by the SBE pursuant to *EC* Section 33127 (Chapter 1462, Statutes of 1988) and published in 5 *CCR*, sections 15440–15466, are recommended for evaluation of the financial condition of school districts affected by any proposed reorganization.

#### Position of Petitioners

Petitioners assert that the number of students in the proposed transfer area represent less than one-third of a percent of the total Orange USD student enrollment. They further note that the Orange USD has failed to address budget shortfalls year after year, and the removal of so few students will not significantly affect the district’s fiscal status.

#### Position of Appellant

The Orange USD argues that the territory transfer will have significant negative effects on the district because:

* The loss of students from the transfer area will exacerbate the long-term declining enrollment problem in the district. The district reports an 11 percent enrollment decline from 2003–04 to 2016–17. The loss of an additional 95 students (not including the students from the transfer area already attending Tustin USD on interdistrict attendance agreements) will compound the already existing student decline.
* The loss of student average daily attendance results in decreased funding to the district.
* The loss of the AV from the transfer area will reduce school bonding capacity for the Orange USD.

#### County Committee Action

The County Committee voted 6-3 (with two members absent) to approve a motion that this “fiscal effect” condition is substantially met. During discussion of the motion, some County Committee members acknowledged that the transfer could (1) exacerbate declining enrollment in the Orange USD and (2) have some negative fiscal impact, but noted that the degree of that impact is unclear.

#### CDE Findings/Conclusion

Students from the proposed transfer area represent approximately 0.41 percent of the total Orange USD enrollment. The AV of the territory is less than one percent of the total AV of Orange USD. While the loss of any resource from a district can be considered a negative effect, it is the opinion of the CDE that losses as small as those just described would not be substantial.

Regarding the specific concerns raised by the Orange USD, the CDE makes the following observations:

##### Exacerbates Declining Enrollment

The Orange USD stated that the district lost 11 percent of its enrollment from 2003–04 to 2016–17, while enrollment at the Tustin USD grew by 27 percent over the same time period. Since 2016–17, enrollment declines at Orange USD have continued, while the Tustin USD enrollment growth trend has reversed as that district experienced enrollment declines each subsequent year.

Enrollment declined 6.2 percent from 2016–17 to 2021–22 in the Orange USD. Looking at the most recent two years, enrollment fell 1.3 percent from 2019–20 to 2020–21 and 0.7 percent from 2020–21 to 2021–22. For the Tustin USD, enrollment dropped 8.2 percent from 2016–17 to 2021–22. The 2019–20 to 2020–21 and the 2020–21 to 2021–22 enrollment declines were 3.2 percent and 2.7 percent respectively. Annual enrollment for each district is displayed in the following table.

***Table 7: Historical Enrollment Trends for Affected Districts***

| Year | Orange USD | Tustin USD |
| --- | --- | --- |
| 2016–17 | 28,522 | 24,130 |
| 2017–18 | 27,915 | 24,015 |
| 2018–19 | 27,473 | 23,768 |
| 2019–20 | 27,291 | 23,521 |
| 2020–21 | 26,943 | 22,761 |
| 2021–22 | 26,756 | 22,140 |

*Source: CALPADS*

Both the Orange USD and the Tustin USD project continuing enrollment declines for at least the next five years. The Orange USD projects almost a 12 percent decline over that time period, approximately double the student loss it has experienced over the previous five-year period (the CDE notes that district had projected a loss of 589 students from 2020–21 to 2021–22, while the actual loss was 187 students).

While the loss of additional students from the proposed transfer area will add to the decline in enrollment that the district likely will experience over future years, it is the CDE’s opinion that the effects from loss of the approximately 100 students currently attending the Orange USD will not be substantial because:

* The loss of students is expected to be gradual over a number of years if the territory transfer is approved. As noted in section 6.3 of this attachment, the CDE believes it to be unlikely that all students will be withdrawn from the schools they currently attend immediately upon the transfer becoming effective.
* The actual Orange USD enrollment loss for the 2021–22 school year was 402 students less than the district had projected. The CDE assumes that the Orange USD had factored in the larger expected loss in its fiscal preparedness plans.

##### Decreases Funding

For the reasons just cited, the CDE does not expect the financial effect due to the loss of students from the proposed transfer area to be substantial. Additionally, there will be some corresponding reduction in costs associated with the loss of students.

##### Reduces Bonding Capacity

The Orange USD argues that the loss of AV, if the territory transfer proposal is approved, will reduce the bonding capacity of the district (reducing support for future bond authorizations) and negatively affect the ability to repay existing bonded indebtedness obligations. The CDE does not believe that removing the AV of the proposed transfer area will have a substantial negative effect on the Orange USD because:

* The AV of the proposed transfer area is less than one percent of the total AV of the district.
* Over the past five years, districtwide AV has increased by almost 24 percent.
* The Orange USD has the ability to request that the SBE waive the bonding capacity limits in *EC* sections 15106 and 15270(a), under the general waiver provisions of *EC* Section 33050 *et seq*.

For the above reasons, the CDE agrees with the determination of the County Committee that the proposed transfer of territory will not cause a substantial negative effect on the fiscal status of the Orange USD. The loss of less than one percent of AV (when the district has experienced significant AV increases over the past years), and the eventual loss of less than one-half of a percent of the total district student population, does represent a financial effect—but, not a significant one.

### 6.6 Summary of CDE Findings

The CDE agrees with the County Committee that all *EC* Section 35753 minimum threshold standards are substantially met. In general, it is the determination of the CDE that the loss of a relatively small number of students (approximately 100 students from a district with over 26,000 students—less than half of a percent of the district population) and the small size of the transfer area (less than one percent of the Orange USD AV) would have no significant negative effects on the Orange USD.

## 7.0 Compelling Reasons and Concerns

An action by the SBE to either affirm or reverse the County Committee is a discretionary action—whether the SBE finds that all *EC* Section 35753 conditions are substantially met or if it finds all the conditions are not met. As part of this discretionary authority, the SBE may consider compelling reasons and concerns offered by affected districts, petitioners and appellants, community members, and the CDE in making its determination to either affirm or reverse the County Committee’s approval.

Similarly, County Committee approval of a territory transfer proposal is a discretionary action. *EC* sections 35709 and 35710 govern the approval processes for territory transfers that the County Committee is required to follow. Both processes recognize the discretionary nature of an action to approve a territory transfer by stating that a County Committee **may** approve a petition if it finds that the minimum threshold standards in *EC* Section 35753 are substantially met.

As stated in section 6.0 of this attachment, *EC* Section 35753 conditions are established as minimum threshold requirements for a school district reorganization and, as such, substantially meeting these standards is not intended to serve as the reasons that compel approval of a reorganization proposal (*Hamilton v SBE*). The County Committee took no formal action to identify the reasons for its approval of the proposal. However, through review of transcripts and audio-recordings of County Committee meetings, it appears to the CDE that approval of the proposal was prompted primarily by the County Committee’s determination that the petitioners had a greater sense of community identity with the Tustin USD than with the Orange USD.

That local approval action is what has been appealed to the SBE. The SBE may consider compelling reasons that support the transfer in any decision it might make to affirm the County Committee decision. Conversely, the SBE may consider any concerns with the proposed transfer in consideration of an action to reverse County Committee approval of the transfer.

The chief petitioners have offered a number of reasons they believe would compel approval. The Orange USD, as the appellant, has provided a number of concerns with the proposal that they believe compel disapproval. Some of these reasons and concerns have been discussed elsewhere in this attachment—those that the CDE considers most relevant (in addition to the CDE’s own reasons and concerns) are presented in the following sections.

### 7.1 Potential Reasons for Supporting the Transfer

Based on analyses of the information available, the CDE finds that the proposed territory transfer substantially meets all nine minimum threshold standards provided in *EC* Section 35753. Again, the fact that a proposed territory transfer substantially meets these standards is not intended as a compelling reason for approval (*Hamilton v. SBE*).

The SBE may consider any issue it finds appropriate, including the following offered by chief petitioners, to determine if a compelling reason for approval exists:

* Community identity with North Tustin and the Tustin USD.
* Previous County Committee actions regarding similar transfers.

These reasons are examined in greater detail in the following paragraphs.

#### Neighborhood Community Identity

Petitioners claim that they are part of the North Tustin community and strongly identify in that way (see section 2.3 of this attachment for more detail). Since the majority of the North Tustin community is within the boundaries of the Tustin USD, petitioners also claim that they strongly identify with that district.

The Orange USD counters the petitioners’ claims by noting only about 20 percent of the students in the proposed transfer area attend Tustin USD schools on interdistrict transfers. The district states, in its appeal: “When there are less than 50 percent of the students in an area on interdistrict permits, there is not demonstrated community support from the parents of school-age students to have their students attend schools in another school district.”

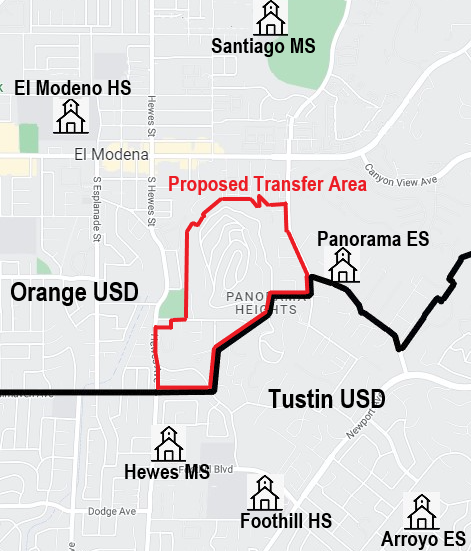
The Orange USD also notes that the closest public library and closest commercial businesses to the proposed transfer area are located within the boundaries of the Orange USD. The district further observes that there is no city of North Tustin—rather, there are a series of common local designations for this area of unincorporated territory such as “Santa Ana 92705, North Tustin 92705, Panorama Heights 92705 etc.”

The CDE also finds the North Tustin designation to be less than clear. North Tustin is defined (through multiple sources viewed by CDE staff) as a Census-Designated Place (CDP)[[3]](#footnote-3) and an unincorporated community. It is interesting to note that the US Census Bureau does not include the territory proposed for transfer within the boundaries of the North Tustin CDP (see attachment 2). However, Google Maps©, and maps from other local sources (e.g., Orange County, city of Orange) do include the territory within the boundaries of a North Tustin local community—but, the CDE notes that the boundaries of the North Tustin local community vary depending on the source (see attachment 2).

##### Distances to Schools

One important component of the perceived community identity between a neighborhood and a school district are the locations of the schools that students in the neighborhood attend (or would attend). As seen in figure 1 and table 8 (on the following page), the Orange USD elementary school is closer to the proposed transfer area than is the Tustin elementary school. The Tustin USD middle and high schools are closer than are the Orange USD middle and high schools. The CDE notes that according to information provided to the County Committee by the affected districts, the Orange USD offers bus transportation to the proposed transfer area, while the Tustin USD would not.

***Figure 1: Map of School Locations***



***Table 8: Distances from the Panorama Heights Neighborhood to Schools***

| District | School | Distance in Miles | Travel Time by Car\* | Travel Time by Bike\* | Travel Time Walking\* |
| --- | --- | --- | --- | --- | --- |
| Orange | Panorama ES | 1.1 | 3 minutes | 6 minutes | 20 minutes |
| Orange | Santiago MS | 2.3 | 8 minutes | 13 minutes | 45 minutes |
| Orange | El Modena HS | 2.3 | 6 minutes | 12 minutes | 42 minutes |
| Tustin | Arroyo ES | 2.2 | 6 minutes | 13 minutes | 42 minutes |
| Tustin | Hewes MS | 1.5 | 4 minutes | 6 minutes | 25 minutes |
| Tustin | Foothill HS | 1.8 | 5 minutes | 9 minutes | 34 minutes |

*\* Source: Google Maps©*

##### Geography of Transfer Area

SBE regulations (5 *CCR* Section 18573[a][2]) establish the geography of an area as a criterion for use in determining if the “community identity” minimum standard of *EC* Section 35753 is substantially met. As discussed in section 6.1 of this attachment, the *EC* Section 35753 interpretation of community identity refers to the community identity of school districts. Here in section 7.1, the focus is the community identity between a neighborhood and a school district. The geographic issues identified in SBE regulations also can play an important role in examining this interpretation of community identity.

As the name implies, the Panorama Heights community primarily is located on a hilltop and hillsides. Ingress and egress for the community is limited to streets along the border between the two unified school districts. There is no direct access from the proposed transfer area to the north or west (i.e., directly toward the Orange USD middle and high schools).

##### Other Community Identity Circumstances

Pursuant to its adopted regulations (5 *CCR* Section 18573[a][2]), the SBE also may consider “other circumstances peculiar to the area” in analyzing the “community identity” minimum standard of *EC* Section 35753. This particular transfer proposal involves attaching unincorporated county territory in one school district to other unincorporated territory in the adjacent district. One distinction of unincorporated territory is that residents do not have to abide by the more extensive regulations (e.g., architectural guidelines and licensing requirements) that perhaps exist in cities of the county.[[4]](#footnote-4)

Thus, within a particular unincorporated area (like North Tustin), similarity of architecture, size, and style of homes could create a sense of community identity.

#### Previous Transfer Proposals

Petitioners note that the County Committee approved a similar transfer proposal (Rocking Horse Ridge) in 2012 and cited this approval as a reason for submitting their own proposal. The Rocking Horse Ridge proposal also was an effort to unite a neighborhood viewed as divided, transferring a portion of North Tustin from the Orange USD to the Tustin USD (see section 2.4 of this attachment for additional information).

The governing board of the Orange USD adopted a neutral position toward the Rocking Horse Ridge territory transfer proposal. Since there was no district opposition, that transfer went into effect without an election. The Orange USD stated that the Rocking Horse Ridge proposal was an effort to unite a new residential neighborhood, and is not comparable to the current proposal.

This current proposal is the second attempt by the petitioners to unite the Panorama Heights neighborhoods. The first proposal was a request to transfer a smaller portion of the Panorama Heights community than is in the current proposal. In 2016, the County Committee unanimously disapproved that proposal primarily due to its determination that approval would create geographically isolated islands of remaining Panorama Heights territory. The petitioners responded with a new proposal, which included additional Panorama Heights territory and addressed the concerns of the County Committee.

### 7.2 Potential Concerns Regarding the Proposed Transfer

The SBE, even if it determines the transfer substantially meets *EC* Section 35753 conditions, may consider any concerns that warrant reversing the County Committee’s action to approve the proposal. Concerns raised by the Orange USD (other than failure to substantially meet minimum threshold requirements) include:

* Socio-economic differences exist between the districts.
* Additional North Tustin territory still remains in the Orange USD.

These concerns are examined in greater detail in the following paragraphs.

#### Socio-economic Issues

In its appeal, the Orange USD highlighted the socio-economic differences between the Orange USD schools that currently serve the proposed transfer area and the Tustin USD schools that would serve the area if the transfer was approved. The district notes, for example, that the percentages of socio-economically disadvantaged (SED) students in the Orange USD schools are two to three times higher than in the Tustin USD schools. Similarly, according to the district the percentages of EL students are three to five times higher and the percentages of students eligible for the FRPM program are two to three times higher. The CDE provides, in table 9, more recent information regarding SED, EL, and FRPM students in the affected schools from 2021–22 CALPADS and the 2019 California School Dashboard.

***Table 9: Socio-economic Differences in Affected Schools***

| District | School | SED | EL | FRPM |
| --- | --- | --- | --- | --- |
| Orange USD | **Panorama Elementary** | 22.0% | 5.0% | 19.9% |
| Tustin USD | **Arroyo Elementary** | 8.3% | 2.5% | 7.2% |
| Orange USD | **Santiago Middle** | 62.1% | 12.3% | 44.7% |
| Tustin USD | **Hewes Middle** | 26.0% | 6.9% | 22.8% |
| Orange USD | **El Modena High** | 54.6% | 9.5% | 41.8% |
| Tustin USD | **Foothill High** | 32.1% | 6.2% | 23.3% |

While the differences between the sets of schools on the socio-economic indicators are significant, the CDE notes that the differences between the districts on these measures are not as considerable. Table 10 displays these values.

***Table 10: Socio-economic Differences in Affected Districts***

| District | SED | EL | FRPM |
| --- | --- | --- | --- |
| Orange USD | 50.3% | 18.0% | 38.8% |
| Tustin USD | 41.2% | 17.1% | 33.3% |

The neighborhoods in the North Tustin area are considered to be some of the more affluent areas in Orange County.[[5]](#footnote-5) Because the vast majority of North Tustin is within the boundaries of the Tustin USD, it is not surprising to the CDE that the Tustin USD schools in the North Tustin area would reflect the socio-economic character of North Tustin, and that those effects would be diluted when expanded districtwide.

The CDE also notes that, as with effects on the racial/ethnic composition of the affected districts and schools (see section 6.2 of this attachment), the proposed transfer of territory would have an insignificant effect on the socio-economic composition of the schools and districts. The relatively small number of students involved would not significantly change the existing socio-economic makeup of any affected school or district if those students transferred from the Orange USD to the Tustin USD.

#### Precedent for Future Transfer Petitions

As is discussed elsewhere in this item (including attachment 2), additional North Tustin territory would remain in the Orange USD even if the current territory transfer proposal is approved. However, as also discussed, there does not appear to be clarity regarding the actual amount of North Tustin territory that would remain.

In the past, the CDE has been considerably reluctant to make recommendations that, in its opinion, could promote similar, and significant, additional transfers.[[6]](#footnote-6) In past cases, the CDE had identified the following factors that could establish a precedent for future transfer attempts.

* The territory in the transfer petition is part of, or adjacent to, previous transfer efforts.
* Similarities exist between the territory in the transfer proposal and the territory in previous transfer attempts.
* Petitioners’ reasons for the transfer (as provided in their petition) could apply to future attempts to transfer the territory of these surrounding areas.

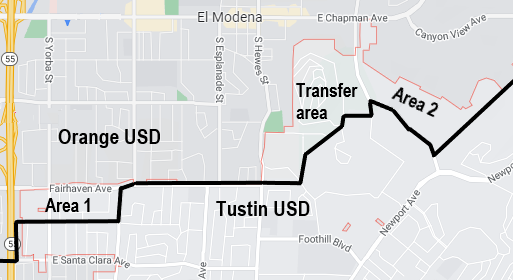
Existence of the above factors has led to long-term efforts, which exist elsewhere in the state, to move territory from a district (or districts) perceived to be less desirable to a district (or districts) perceived to be more desirable:

* There have been multiple efforts to transfer portions of the city of Menlo Park (San Mateo County) from the Ravenswood City Elementary School District (CESD) to the Menlo Park CESD. These efforts began with an approval of a territory transfer in 1983 and are ongoing. The SBE last heard an appeal of a local disapproval of a petition to transfer territory from the Ravenswood CESD to the Menlo Park CESD at its September 2018 meeting—at which time it affirmed the decision of the San Mateo County Committee to disapprove the transfer. Similar efforts currently are under local consideration.
* There have been long-term efforts to transfer portions of the city of Saratoga and the town of Los Gatos (Santa Clara County) from the Campbell Union School District (SD) and the Union SD (both components of the Campbell Union High SD) to the Los Gatos Union Elementary SD (UESD) and the Saratoga UESD (both components of the Los Gatos-Saratoga Union High SD). Those efforts began with approvals of territory transfers in 1994 and 1996 and, as with the Ravenswood CESD, continue. The SBE most recently heard appeals from three separate actions of the Santa Clara County Committee to disapprove such transfers at its January 2019 meeting—the SBE affirmed the local action in each appeal. The SBE has another similar appeal pending that will be heard at a future meeting.
* The previously referenced item on the September 9, 2021, SBE meeting agenda dealt with an effort to transfer territory from the Coachella Valley USD to the Desert Sands USD (Riverside County). In this matter, there had been a history of attempts (including one successful and one denied by the SBE on appeal) to move territory out of the Coachella Valley USD. The historical efforts to transfer territory from the Coachella Valley USD had been acknowledged by the California State Legislature. In 2000, the Governor signed Senate Bill (SB) 977 (Statutes of 2000), which provided protection for the Coachella Valley USD from attempts to remove territory.[[7]](#footnote-7)

The current territory transfer proposal meets the factors described above, which could promote similar additional transfers—the CDE believes that other circumstances specific to the current proposal mitigate those concerns:

* Although it appears unclear just what North Tustin territory would remain in the Orange USD if the current proposal is approved, the CDE believes that the most reasonable scenario is that the two areas identified in figure 2 would remain. Thus, there appears to be a limited potential for future transfers.

*Figure 2: North Tustin Territory in Orange USD*



* CDE estimates that fewer than 250 homes are in area 1 of figure 2 and fewer than 150 homes in area 2 of that figure. Thus, combined, the two areas likely would contain fewer students than are in the current proposal.
* Area 2 does contain Orange USD’s Panorama Elementary School—and, the removal of a school presents an additional level of concern. However, the CDE believes that any proposal to transfer area 2 would have difficulty substantially meeting the minimum threshold standard stated in *EC* Section 35753(a)(3): *The proposal will result in an equitable division of property and facilities of the original district or districts.* The number of students transferred would not be commensurate with the loss of school housing capacity.

### 7.3 CDE Recommendation Regarding Reasons and Concerns

The chief petitioners have provided reasons that they believe justify approval of the transfer, while the Orange USD provided its rationale for why the SBE should reverse the action of the County Committee to approve transfer of the Panorama Heights community.

The CDE does not find that any of the reasons offered by the petitioners make a compelling enough case to approve the proposed transfer of territory, because of the following issues:

* Although petitioners may feel a greater sense of connection to North Tustin and the Tustin USD, the CDE finds that a number of factors mitigate the compelling nature of this community identity, including:

1. The lack of consensus regarding what territory North Tustin comprises;
2. The fact that additional North Tustin territory would remain in the Orange USD should the current proposal be approved; and
3. The long-standing attendance of students from the proposed transfer area at Orange USD schools.

* Petitioners’ reference to County Committee approval of a previous territory transfer proposal (Rocking Horse Ridge) as rationale to support their proposal is debatable given the difference between the two proposals. The Rocking Horse Ridge community was a new development at the time, while the Panorama Heights is a much more established community.
* The distances from the proposed transfer area to schools in either district is not substantial. The greatest difference is at the elementary school level—the Orange USD elementary school is actually 1.1 miles closer and is considered a neighborhood school. The differences are much less at the middle and high school levels, with Tustin USD schools between five- and eight-tenths of a mile closer. Furthermore, the Orange USD offers bus transportation while the Tustin USD does not.

However, the County Committee did, in the CDE’s opinion, find a compelling reason to approve the transfer. The CDE (and, historically, the SBE) gives considerable weight to local decisions regarding territory transfer proposals. In this case, the Orange County Committee approved the transfer proposal with an 8-1 vote (two members absent). Although the County Committee did not formally identify a reason for its approval, review of transcripts and audio-recordings of meetings document that County Committee members clearly expressed support for the community identity between the Panorama Heights neighborhoods and the Tustin USD—thus supporting the rationale provided by the petitioners for the transfer.

The Orange USD has offered concerns that it believes support an action to reverse this local approval of the transfer. As with the reasons to support the proposal offered by the petitioners, the CDE does not find that the Orange USD stated concerns are compelling enough to reverse the County Committee’s action for a number of reasons, including:

* The Orange USD focuses on the socio-economic differences between the Orange USD schools that currently serve the proposed transfer area and the Tustin USD schools that would serve the area if the transfer was approved. While those school level differences exist, the district-level differences are less pronounced. As noted already, North Tustin is considered one of the more affluent areas in Orange County. It is not surprising that students in the schools located within the North Tustin area reflect the socio-economic characteristics of that area. Given the relatively small number of students in the transfer area, attendance changes by those students would not substantially alter the socio-economic composition of any affected school.
* Additional North Tustin territory would remain in the Orange USD if the transfer is approved. However, the CDE does not believe that approval of the current proposal would generate significant additional transfer proposals given the limited North Tustin area remaining in the Orange USD and the lack of consensus regarding what territory North Tustin comprises.

In summary, the CDE does not find the petitioners’ reasons compelling enough to support the transfer. However, it also does not find the concerns raised by the Orange USD to be compelling enough to justify reversal of the local action to approve the transfer. Thus, it is the CDE’s recommendation that the action of the County Committee should be affirmed by the SBE. As noted previously, both the CDE and the SBE give considerable weight to local decisions regarding territory transfer proposals. In this case, the Orange County Committee approved the transfer proposal with an 8-1 vote and, in the opinion of the CDE, provided a rationale for its discretionary action. The CDE believes that the County Committee is the best position to understand the local educational needs and concerns of the affected districts and communities.

## 8.0 Amendments to the Territory Transfer Proposal: Area of Election

The SBE has authority to amend or add certain provisions to any petition for reorganization. Pursuant to *EC* Section 35756, the SBE is required to establish the election area if its action results in approval of a district reorganization. The following information details the CDE recommendation regarding this provision.

District opposition to a territory transfer approved by a County Committee is one of the factors that triggers a local election (see *EC* sections 35709 and 35710). The Orange USD, as the appellant in this matter, is on record opposing the territory transfer—thus, final approval of the transfer must be through approval at a local election. The County Committee voted to establish the area proposed for transfer as the election area. If the SBE affirms the action of the County Committee, it must determine the territory in which this election will be held (pursuant to *EC* Section 35756).

The “default” election area in *EC* Section 35732 is the territory proposed for reorganization (i.e., the proposed transfer area). The SBE may expand the election area if it determines that conditions warrant such expansion.

### 8.1 Area of Election Principles

In establishing the area of election, the CDE and SBE follow the legal precedent set by the California Supreme Court in *Board of Supervisors of Sacramento County, et al. v. Local Agency Formation Commission* (1992) 3 Cal. 4th 903 (the *“LAFCO”* decision). *LAFCO* holds that elections may be confined to within the boundaries of the territory proposed for reorganization (the “default” area), provided there is a *rational basis* for doing so. *LAFCO* requires we examine: (1) the public policy reasons for holding a reorganization election within the boundaries specified; and (2) whether there is a genuine difference in the relevant interests of the groups that the election plan creates.

A reduced voting area has a fair relationship to a legitimate public purpose. State policy favors procedures that promote orderly school district reorganization statewidein a manner that allows for planned, orderly, community-based school systems that adequately address transportation, curriculum, faculty, and administration.

Discussion of other judicial activity in this area is warranted. In a case that preceded *LAFCO,* the California Supreme Court invalidated an SBE reorganization decision that approved an area of election that was limited to the newly unified district. As a result, electors in the entire high school district were entitled to vote (*Fullerton Joint Union High School District v. State Board of Education* [1982] 32 Cal. 3d 779 [*Fullerton*]). The *Fullerton* court applied strict scrutiny and required demonstration of a compelling state interest to justify the exclusion of those portions of the district from which the newly unified district would be formed.

#### 8.2 Recommended Area of Election

The *Fullerton* case does not require that the SBE conduct a different analysis than that described above. The *LAFCO* decision disapproved the *Fullerton* case, and held that absent invidious discrimination, the rational basis approach to defining the election area applied. In this matter of the proposed transfer of territory from the Orange USD to the Tustin USD, no discrimination, segregation, or racial impacts are identified. Accordingly, the *LAFCO* standard and analysis applies.

The CDE finds no reason to believe that the proposed transfer would have a significant effect on the present or future racial composition of any affected district, or have any significant negative fiscal effect. Therefore, the CDE recommends that the election area only be the territory proposed for transfer if the SBE acts to affirm the County Committee’s approval of the territory transfer proposal. This recommendation is consistent with the action of the County Committee to establish the territory proposed for transfer as the election area.

## 9.0 State Board of Education Action

Subdivision (c) of *EC* Section 35710.5 provides that the SBE, upon receiving an appeal from an action of a County Committee, may review the appeal (either in conjunction with a public hearing or based solely on the administrative record) or ratify the County Committee’s decision by summarily denying review of the appeal. Past practice of the SBE has been to hear all appeals in conjunction with a public hearing—thus, the assumption in this section is that the SBE will conduct a public hearing as part of its review.

### 9.1 State Board of Education Options

The SBE has the following three options for this territory transfer appeal:

1. The SBE may review the appeal in conjunction with a public hearing.

* Following review of the appeal, the SBE must affirm or reverse the action of the County Committee.
* If the proposal will be sent to election, the SBE must determine the territory in which the election is to be held.
* The SBE may reverse or modify the action of the County Committee in any manner consistent with law.

1. The SBE may request additional information regarding the appeal or the territory transfer—and choose not to act until a later meeting.
2. The SBE, pursuant to *EC* Section 35720, may direct the County Committee to formulate plans and recommendations for an alternative reorganization. The County Committee then would report back to the SBE regarding its actions.

### 9.2 California Department of Education Findings

The CDE makes the following findings regarding the territory transfer proposal:

* All minimum threshold standards of *EC* Section 35753 are substantially met. This finding corresponds to the County Committee’s determination that all such conditions are substantially met.
* There is no compelling local educational reason to transfer the Panorama Heights area from the Orange USD to the Tustin USD.
* There are no compelling local educational concerns to justify reversing the County Committee decision to approve the proposed territory transfer.

### 9.3 Recommended Action

The California Department of Education (CDE) recommends that the SBE affirm the decision of the County Committee to approve the proposal to transfer territory from the Orange USD to the Tustin USD. Regarding the election required to finalize the transfer, the CDE further recommends that the SBE not expand the area for the election beyond the territory proposed for transfer. This recommendation is consistent with the County Committee’s action to establish the election area as the territory proposed for transfer.

# ATTACHMENT 2 Maps of North Tustin and School District Boundary Lines

## US Census Bureau Map

The US Census Bureau maintains school district boundary maps[[8]](#footnote-8) for a variety of purposes. From a school district perspective, the most important purpose is to use decennial census population data and other information to form estimates of the number of children aged 5 through 17 in families in poverty in each school district. These estimates are the basis of the Title I allocation for school districts.

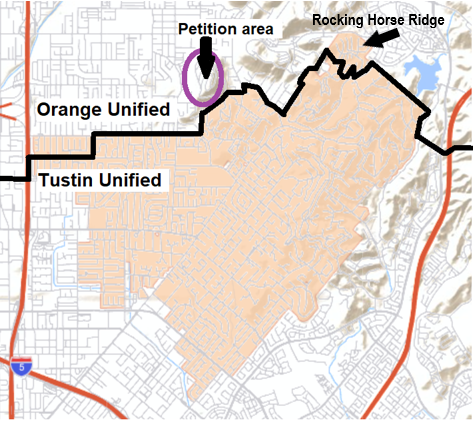
School district boundaries are revised through the US Census Bureau’s School District Review Program (SDRP).[[9]](#footnote-9) In California, that program involves the Census Bureau sending current boundary information to the California Department of Education (CDE) mapping coordinator who, in turn, sends a request to county superintendents of schools to update boundaries. Revised boundary information is returned to CDE and then transmitted back to the US Census Bureau. CDE maintains its own mapping system based on this information.[[10]](#footnote-10)

Figure 1, on the next page, is the US Census Bureau map of North Tustin. For the purposes of reviewing the circumstances of the proposed transfer of territory from the Orange Unified School District (USD) to the Tustin USD, the following details of the map in figure 1 are relevant:

* The transfer area is not included within the US Census Bureau boundaries for North Tustin, which is defined as a Census-Designated Place (CDP)[[11]](#footnote-11).
* The Rocking Horse Ridge community (seen in the northeast corner of North Tustin appears within the boundaries of the Orange USD, although local information was provided documenting an approved transfer of this area to the Tustin USD in 2012.

Regarding the Rocking Horse Ridge issue, the Orange County Department of Education (DOE) states that it has not yet updated the US Census Bureau maps with the information from the 2012 approval of the transfer of the Rocking Horse Ridge area. The Orange DOE will work with the CDE’s mapping coordinator to provide this update.

*Figure 1: US Census Bureau Map of North Tustin*



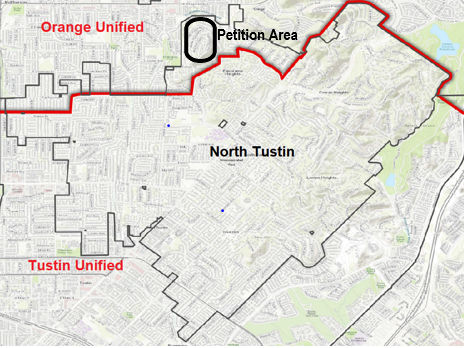
## Orange County Map

Various agencies within county government need to know boundaries of school districts to carry out their functions—particularly, the county tax collection office (to ensure proper collection of property tax revenue) and the county elections office (to create accurate voter precincts). Boundary maps of all local agencies (including school districts) are updated through the California State Board of Equalization (pursuant to *Government Code* Section 54900 *et seq.).*

Figure 2 contains a map from the Orange County Registrar of Voters office. This map differs from the US Census Bureau map by including in North Tustin: (1) the proposed transfer area; (2) territory adjacent to the transfer area territory, which includes the Panorama Elementary School; and (3) other “fingers” of unincorporated county territory (along both the northwest and southwest boundary lines).

The Rocking Horse Ridge transfer area is in the Orange USD, according to this map.

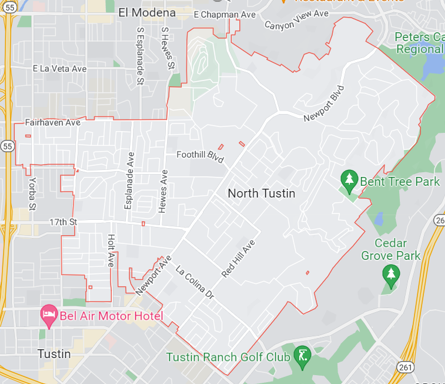
*Figure 2: Orange County Government Map of North Tustin*



## Google© Map

The Google© map of North Tustin displays yet a third version of the boundaries of that community. Based on the review of the administrative record for the appeal, the CDE believes that this map most accurately depicts the understanding of the North Tustin boundaries as discussed during the local territory transfer process.

*Figure 3: Google© Map of North Tustin*



1. Pursuant to *EC* sections 35709 and 35710, a county committee may approve a territory transfer only if it finds all conditions in *EC* Section 35753 substantially met. [↑](#footnote-ref-1)
2. A handbook describing the school district organization process has been jointly prepared by the California County Superintendents’ Educational Services Association and the CDE, and approved by the SBE. It is available on the CDE’s website at <https://www.cde.ca.gov/re/lr/do/sdohandbook.asp>. [↑](#footnote-ref-2)
3. According to the US Census Bureau, a CDP is the statistical counterpart of an incorporated place. CDPs are delineated to provide data for settled concentrations of populations (<https://www.census.gov/data/academy/data-gems/2018/cdp.html>). [↑](#footnote-ref-3)
4. See “North Tustin fights for independence, identity and maybe a new zip code,” *The Orange County Registrar*, June 1, 2015 (<https://www.ocregister.com/2015/06/01/north-tustin-fights-for-independence-identity-and-maybe-a-new-zip-code/>) for additional description. [↑](#footnote-ref-4)
5. *Ibid.* [↑](#footnote-ref-5)
6. See, for example, Item 5, September 9, 2021, SBE meeting agenda (<https://www.cde.ca.gov/be/ag/ag/yr21/agenda202109.asp>). [↑](#footnote-ref-6)
7. The territory transfer “exclusion” for the Coachella Valley USD expired in 2012. [↑](#footnote-ref-7)
8. <https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_main.html>. [↑](#footnote-ref-8)
9. <https://www.census.gov/programs-surveys/sdrp.html#:~:text=The%20SDRP%20enables%20state%20officials,%2C%20levels%2C%20and%20grade%20ranges>. [↑](#footnote-ref-9)
10. <https://gis.data.ca.gov/datasets/CDEGIS::california-school-district-areas-2020-21/explore?location=36.791507%2C-119.002226%2C6.70>. [↑](#footnote-ref-10)
11. According to the US Census Bureau, a CDP is the statistical counterpart of an incorporated place. CDPs are delineated to provide data for settled concentrations of populations (<https://www.census.gov/data/academy/data-gems/2018/cdp.html>). [↑](#footnote-ref-11)