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UNIFIED SCHOOL DISTRICT

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8 CONTRA COSTA COUNTY COMMITTEE ON  
9 SCHOOL DISTRICT ORGANIZATION  
10 STATE OF CALIFORNIA

11 In the Matter of

12 THE REORGANIZATION OF MT. DIABLO  
UNIFIED SCHOOL DISTRICT  
13 NORTHGATE AREA BY 25 PERCENT  
REGISTERED VOTER PETITION

**PRELIMINARY COMMENTS TO  
PETITION FOR REORGANIZATION  
NORTHGATE AREA OF MT. DIABLO  
UNIFIED SCHOOL DISTRICT**

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16 **INTRODUCTION**

17 A. Governing Board Position on Possible Reorganization.

18 On January 23, 2017, the Governing Board of the Mt. Diablo Unified School District  
19 (“District” or “MDUSD”) unanimously adopted Resolution No. 16/17-28 opposing the petition  
20 submitted by Linda Loza and her organization, Northgate Community Advocacy for our Public  
21 Schools (“Northgate CAPS”), seeking to create a new unified school district and transferring the  
22 territory of the District containing five schools to the new district. The identified schools are  
23 Bancroft Elementary, Valle Verde Elementary, Walnut Acres Elementary, Foothill Middle, and  
24 Northgate High Schools. (**Exhibit 1.**) (One school was not mentioned—Eagle Peak Montessori  
25 Charter School. It is a so-called “captive” charter and remains a school of the District. It is  
26 located on District-owned property at the former Castle Rock School.)

27 In essence, the Governing Board does not consent to the reorganization of the District as  
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1 proposed by the petition or as it may change by action of the Contra Costa County Committee on  
2 School District Organization (“County Committee” or “Committee”).

3 The primary purpose of these two initial public hearings is to seek the comments and views  
4 on the petition. Education Code section 35705.5<sup>1</sup> sets forth the required content of the petition for  
5 consideration by the County Committee.

6 B. Section 35705.5 Powers and Content of Petition.

7 Section 35705.5, in relevant part,<sup>2</sup> states:

8 (a) The county committee may add to the petition any of the  
9 appropriate provisions specified in Article 3 (commencing with  
10 Section 35730) that were not included in the petition as filed and  
11 may amend any such provision that was so included.

12 (b) At least 10 days before the public hearing, or hearings, on the  
13 petition, the county committee shall make available to the public and  
14 to the governing boards affected by the petition a description of the  
15 petition, including all of the following:

16 (1) The rights of the employees in the affected districts to continued  
17 employment.

18 . . .

19 (5) A description of the territory or school districts in which the  
20 election, if any, will be held.

21 (6) Where the proposal is to create two or more new districts,  
22 whether the proposal will be voted on as a single proposition.

23 As the Governing Board opposes the petition, we will comment only on those matters in  
24 section 35705.5 on which the District has views.

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<sup>1</sup> All further references to sections will be to the Education Code, except as specifically identified.  
<sup>2</sup> The District has no position on the remaining provisions of section 35705.5 since it opposes the creation of the new district and believes those determinations are not necessary.

1 C. The Rights of the Employees in the Affected Districts.

2 As proposed, the petition seeks to split off 14 percent of student enrollment and about 18  
 3 percent, by assessed value, of the current District territory. School districts are labor intensive  
 4 undertakings. As a result, the division of assets, if the petition were successful, would affect the  
 5 employees, both certificated and classified, who serve the students of the District.

6 Section 35555 sets forth the rights and status of certificated employees of the previous  
 7 district, both permanent and probationary. Permanent certificated employees have the right to  
 8 elect to remain in the previous remaining district by February 1 in the school year prior to the first  
 9 school year of the new district. Probationary certificated employees would remain in the schools  
 10 to which they were assigned unless non-re-elected or non-re-employed by the subsequent  
 11 employing district. It is not clear how this statute would apply to the numerous itinerant teachers  
 12 and other professional specialists who provide services on a district-wide basis, but serve the  
 13 students of the five schools. In other words, it very well may be that the certificated employees of  
 14 the current schools and itinerant services subject to the petition could elect not to transfer to the  
 15 new district. Also, the new or remaining district governing boards may elect to release a number  
 16 of probationary certificated employees in order not to be overstaffed. This could cause much  
 17 confusion, disruption, and delay in staffing the new and the remaining district. Also, it could lead  
 18 to layoffs of certificated employees by the original district.

19 Section 35556 sets forth the rights of classified employees. In some ways, it is even more  
 20 convoluted than section 35555. This is due to the fact that a large number of classified employees  
 21 are not regularly assigned to the school sites, but rather function in school support roles at the  
 22 District office or other departments of the District serving all schools. Like certificated  
 23 employees, these classified employees retain employment rights, but determining the retention of  
 24 those classified employees and any new assignments may become problematic.

25 D. Area of Election.

26 The District Board agrees with the recommendation of County staff that an election (if the  
 27 criteria were all found to be substantially met, a point not conceded here and very much in  
 28

1 contention) would be held within the entire area of the current MDUSD. A truncated scope of  
 2 election would disenfranchise the estimated 85 percent of the remaining voters in the District who  
 3 would be affected by the proposed reorganization.

4 It is the District’s contention that it is not proper to hold the election solely in the  
 5 Northgate area, primarily because of the practical effects on District students and parents,  
 6 employees, and members of the community occasioned by a removal of a large part of a currently  
 7 functioning and successful school district. Some of the effects include, but are not limited to, the  
 8 cost of a division of assets, the disruption of programs, the cost of a new district administrative  
 9 staff and new support facilities, and the reassignment of staff and students. (These will be fleshed  
 10 out in the report under section 35753 in the coming days.) The entire electorate should be  
 11 involved in deciding whether this proposed momentous shift of public education of the children in  
 12 the Mt. Diablo area will occur.

13 Additionally, there are statutory and constitutional issues on this matter.

14 In addition to section 35705.5, the applicable statutes are:

15 Section 35732 states:

16 Plans and recommendations may include a provision specifying the  
 17 territory in which the election to reorganize the school districts will  
 18 be held. In the absence of such a provision, the election shall be held  
 19 only in the territory proposed for reorganization.

20 Section 35733 states:

21 Whenever the recommendation is to divide the entire territory of an  
 22 existing school district into two or more separate school districts, the  
 23 recommendation may provide that the plans and recommendations  
 24 be voted upon as a single proposition.

25 These statutory provisions require a recommendation by the Committee of the location and  
 26 scope of any election since the petition did not state it. (Once again, this assumes that all criteria  
 27 are found to be substantially met and, once again, this point is not conceded and very much in  
 28 contention.) In our view, the “territory proposed for reorganization” stated in section 35732 is the  
 entire District since the petition seeks to split the District into two new unified school districts.

1 This view is supported by the following language in section 35733 stating that the division of an  
 2 existing district may be accomplished by a single proposition.

3 In addition, the resulting ethnic population of students would shift dramatically with this  
 4 proposed reorganization. In just one example, the Hispanic percentage of students enrolled in the  
 5 District is 41.6 percent, based on the most recent year for enrollment (2016-2017, see below). The  
 6 newly formed district would be 12.6 percent Hispanic using that database information. This is a  
 7 significant impact and will have constitutional ramifications.

8 If the Committee were to limit the election to the Northgate High School area, this would  
 9 infringe on the right to vote of all District residents. As the California Department of Education  
 10 notes in its School District Organization Handbook (2016) in Chapter 7 at page 115:

11 . . . [T]he court in LAFCO<sup>3</sup> recognized federal case law reasoning  
 12 that, even though state government has a wide latitude in creating  
 13 various types of political subdivisions, that latitude must necessarily  
 14 be qualified by a state’s fundamental constitutional obligation to  
avoid racial or other invidious discrimination. (LAFCO, *supra*, at  
 pages 915, 916.) (Emphasis supplied.)

15 The District requests that the Committee add the provision calling a District-wide election  
 16 in the unlikely event that all of the required criteria are found to be substantially met.

17 E. California Environmental Quality Act (CEQA).

18 As we currently understand the view of the California Department of Education (“CDE”)  
 19 of the reorganization statute, the CEQA process is completed at the State Board of Education  
 20 (“SBE”) level, but the District wants to ensure that the issue was raised here at the earliest stage  
 21 and preserve its rights for a challenge.

22 A petition to reorganize a school district or districts is a “project” under CEQA requiring  
 23 the statutory and regulatory process to be followed in determining what level of review must be  
 24 utilized. (*Fullerton Joint Union H. S. D. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795, 808  
 25 (majority when concurrence counted); *Save Our Schools v. Barstow Unified School District Board*

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26 <sup>3</sup> *Board of Supervisors of Sacramento County, et al. v. Local Agency Formation Commission (LAFCO)* (1992) 3  
 27 Cal.4th 903 considering the holding of *Fullerton Joint Union H.S.D. v. State Bd. of Education* (1982) 32 Cal.3d  
 28 779.

1 (2015) 240 Cal.App.4th 128, 137-138 (school district CEQA preliminary analysis even if action  
 2 may be categorically exempt); see *San Lorenzo Valley C.A.R.E. v. San Lorenzo Valley U.S.D.*  
 3 (2006) 139 Cal.App.4th 1356, 1372-1373 (same.)

4 It is safe to say that at least 14 percent to 18 percent of the territory of the current District  
 5 would be severed away by any approved action to reorganize, depending on the County  
 6 Committee recommendation on the actual boundaries. There are also data to indicate that some of  
 7 those current 4,520 students would not be residents of the proposed new district and some students  
 8 who attend other schools in the District would be residents of the five identified school attendance  
 9 areas in the petition. This could cause a large shift in traffic patterns on local roads such as the  
 10 impacted Ygnacio Valley Road. Another example is the BART tracks north of Oak Grove Middle  
 11 School (a facility abutting the proposed northern boundary and carved out of the Bancroft area)  
 12 which form a physical barrier and its attendant access restrictions between Oak Grove and the  
 13 proposed remaining MDUSD. These and other changes will affect air quality and greenhouse gas  
 14 emissions. Also, the shift will entail the acquisition of new facilities to house academic and  
 15 business support staff, which will entail attendant environmental impacts.

16 We believe that this data when fleshed out by further research will show that, through a  
 17 preliminary review under CEQA, an initial study is required and there is no exemption for the  
 18 proposed action. While it is too soon to make a definitive statement, given the numbers noted  
 19 above, at a minimum, a traffic study and possibly other studies of other environmental impacts  
 20 will need to be undertaken. It remains to be determined whether those impacts may be properly  
 21 identified and possibly ameliorated by measures included in an appropriate mitigated negative  
 22 declaration or a full environmental impact report.

23 F. The Ten (Nine Operative) Statutory Criteria.

24 The District, at this early stage, desires to provide some preliminary comments on the  
 25 statutory criteria that the County Committee must find in this proceeding prior to recommending  
 26 approval or disapproval of the petition. These comments are subject to further study and provision  
 27 of more data and information by County Committee staff, the District, and the petitioner. Other  
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1 persons will provide further evidence for the record in addition to these Preliminary Comments.

2 The petition was filed on February 23, 2017. It seeks to transfer the attendance areas of  
 3 five (5) schools of MDUSD to form the self-styled “Northgate Unified School District”  
 4 (“proposed new district”), which currently does not exist. As noted before, the schools are  
 5 Northgate High School, Foothill Middle School, Bancroft Elementary School, Valle Verde  
 6 Elementary School, and Walnut Acres Elementary School. (Also as noted above, petitioner did  
 7 not include the Eagle Peak Montessori Charter School on the former Castle Rock School site,  
 8 closed as a District school in 1985, adjacent to Northgate High School. The petition does not  
 9 suggest how that school would be handled.) The District is in the process of analyzing the 159  
 10 page report on the petition issued by Northgate CAPS on April 21, 2017 and will have more  
 11 comments on that later in time as that analysis proceeds.

12 The area that is identified to be transferred from MDUSD to the proposed new district is  
 13 located in the south central portion of MDUSD lying primarily in the City of Walnut Creek,  
 14 although the school attendance areas do not coincide with the City’s boundaries. In fact, the  
 15 school attendance boundaries for each level do not coincide either.

16 On March 22, 2017, the County Superintendent of Schools determined that the petition  
 17 was initially sufficient for review and consideration by the County Committee under the relevant  
 18 provisions of the Education Code. While the statutory conditions and the regulation adopted by  
 19 the SBE couch the language in terms of a state actor, i.e., SBE, section 35707(a) requires that the  
 20 County Committee find whether the proposed action would: (1) adversely affect the school  
 21 district organization of the county, and (2) whether it would comply with the provisions of section  
 22 35753 enumerated in paragraphs (1) to (10), inclusive, of subdivision (a) of that section, such that  
 23 they are substantially met.

24 We preliminarily discuss each criterion in turn, noting that there are actually nine operative  
 25 criteria with the tenth criterion being a “catchall” provision permitting the SBE to create other  
 26 criteria. The only current SBE created criterion relates to an “exceptional situation” that may exist  
 27 due to identified facts and circumstances. An “exceptional situation” does not appear in this  
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1 petition or under any facts or circumstances currently known.

2 1. The Reorganized Districts will be Adequate in Terms of Number of Pupils  
3 Enrolled.

4 MDUSD as of 2016-2017 enrolls 31,814 students. (CDE, Data Quest, October 2016 –  
5 **Exhibit 2.**) The proposed new district, using the current enrollment on the CDE Data Quest  
6 website, is projected to enroll about 4,520 students (subject to adjustment due to residency). The  
7 guideline set by the SBE in California Code of Regulations, title 5, section 18573 (a)(1)(A)  
8 suggests that at least 1,501 students be enrolled in a unified district in order to be viable.  
9 However, it is the District’s belief that, in any event, the projected level of enrollment at 4,520 will  
10 impact the new district’s ability to fund its schools and programs adequately. While the petition  
11 appears to meet the minimum attendance requirements under this condition, the magnitude of the  
12 shift would create a myriad of other issues described in subsequent sections and by other data  
13 presented at the public hearings.

14 **District Recommendation:** It appears that the condition that adequate enrollment is  
15 maintained in both districts may not be substantially met if cost, programs, and student needs are  
16 considered as noted below and in the future as data are developed.

17 2. The Districts are Each Organized on the Basis of a Substantial Community Identity.

18 As noted in California Code of Regulations, title 5, section 18573 (a):

19 . . .

20 (2) To determine whether the new district is organized on the basis  
21 of substantial community identity, the following criteria should  
be considered:

22 (A) Isolation

23 (B) Geography

24 (C) Distance between social centers

25 (D) Distance between school centers

26 (E) Topography

27 (F) Weather



1           Currently, the proposed new district lies solely within MDUSD. In addition, the proposed  
 2 new district lies primarily, but not solely, within the city limits of the City of Walnut Creek.  
 3 However, the vast majority of the proposed area lies between Lime Ridge Open Space and Shell  
 4 Ridge Open Space backing up to Mt. Diablo. Physically, the area is not easily accessible to the  
 5 City Center of Walnut Creek to the southwest. Rather, the geography and topography focuses this  
 6 area north and west toward both the Cities of Concord and Pleasant Hill. Those two cities are the  
 7 two largest cities within the boundaries of MDUSD.

8           The inclusion of the entire attendance area of Bancroft School will cause a division of  
 9 school centers and communities. (See portions of Attendance Area Maps of the elementary,  
 10 middle, and high schools dated 2005 and 2007 – **Exhibit 3.**) As pointed about above, the Oak  
 11 Grove Middle School will be separated by a physical barrier from its proposed truncated  
 12 attendance area. Likewise, Ygnacio Valley High School will be surrounded on three sides by the  
 13 proposed new district boundaries and virtually cut off from its proposed truncated attendance area.  
 14 Finally, it is projected that Highlands School just to the east of the proposed new district would  
 15 lose 325 students because Crossings and Crystyl Ranch are included in the petition. While  
 16 petitioner will contend the Northgate area is the community on which to focus, the County  
 17 Committee must consider the disruption to and division of attendance areas of the remainder  
 18 district.

19           **District Recommendation:** It appears that the isolation of remaining schools, geography,  
 20 social center, and school center aspects militate against a finding that the proposed new district  
 21 would be organized on the basis of substantial community identity. In addition, the proposal  
 22 would sever two secondary schools from their communities in practical effect while being  
 23 technically compliant with the “anti-leapfrogging” statutes (school district boundaries must be  
 24 contiguous). Finally, Highlands School would lose half of its student population. This condition  
 25 may not be substantially met.

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3. The Proposal will Result in an Equitable Division of Property and Facilities of the Original District or Districts.

The proposal to split away about 14 percent of the school population and five current schools of the District (and possibly six including Eagle Peak Montessori) will entail a very complicated division of property. Various supporting divisions such as the District office and its various departments (such as Academic Support, Fiscal Services, Personnel, and Transportation, all providing the life blood for the schools) and the Maintenance and Operations Department at another site all exist in Concord some miles away from the proposed area of the new district. It is not clear at this juncture how those departments will be “equitably divided” or even if they can be. The alternative is that the new district will have to create such support departments from scratch. In all likelihood, there is little open, unused property that is within the proposed territory which could be used for a district office and support services, forcing the need to acquire property at what would likely be high market prices. In that case, the criteria below concerning cost to the state due to the reorganization, facilities cost, and a negative fiscal impact to the proposed new district must be closely analyzed.

**District Recommendation:** Preliminarily, it is not shown how the transfer will result in an equitable division of property and facilities and as such this condition may not be substantially met.

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.

The proposed reorganization will result in significant demographic shifts from the existing make up of MDUSD which is problematic with respect to this condition.

The current MDUSD student population is 41.6 percent Hispanic, 32.2 percent White, 7.3 percent Asian, 4.6 percent Filipino and 14.3 percent Other (Another Ethnicity, Two or More Races, or Race Not Stated). (CDE, Educational Demographics Unit, Data Quest 2016-2017 - **Exhibit 2.**)

Using the Data Quest numbers, the resulting new unified school district would be projected

1 at 12.6 percent Hispanic, 52.5 percent White, 14.7 percent Asian, 4.3 percent Filipino, and 15.9  
2 percent Other (Another Ethnicity, Two or More Races, or Race Not Stated). The remaining part  
3 of MDUSD would be 46.6 percent Hispanic, 29.1 percent White, 6.1 percent Asian, 4.7 percent  
4 Filipino, and 13.5 percent Other (Another Ethnicity, Two or More Races, or Race Not Stated),

5 There is a startling and stark difference in the new district projected enrollment. The  
6 Hispanic enrollment would drop 29 percentage points. The Asian enrollment would increase 7  
7 percentage points. The White enrollment would increase 20 percentage points.

8 **District Recommendation:** The condition that the proposed reorganization of the creation  
9 of a new separate unified school district will preserve each affected district's ability to educate  
10 students in an integrated environment and would not promote racial or ethnic discrimination or  
11 segregation cannot be substantially met.

12 5. Any Increase in Costs to the State as a Result of the Proposed Reorganization Will  
13 Be Insignificant and Otherwise Incidental to the Reorganization.

14 The Contra Costa County Office of Education staff in the information provided on  
15 April 21, 2017 under section 35705.5 stated:

16 The per pupil funding as determined using an estimate based on the  
17 Local Control Funding Formula for the Mt. Diablo Unified School  
18 District is \$8,836 per student. The estimated per pupil funding for  
19 the proposed Northgate Unified School District is \$8,150 per  
20 student. The effect of the petition on the Mt. Diablo Unified School  
21 District changes the current estimated per pupil funding from \$8,836  
22 to \$8,969, an increase of \$133 per student.

23 The cost to the state if the transfer is made and the students are generated at the expected  
24 rate would entail cost to the state on an ongoing basis.

25 There also needs to be a thorough analysis of any cause which may create an additional  
26 burden to the state for special education or remaining categorical programs (not covered by  
27 LCFF).

28 The unduplicated student percentages may change potentially resulting in MDUSD  
becoming eligible for the LCFF concentration grant, although these differences are still being  
analyzed at the present time. (We acknowledge, but do not agree with, the CDE's view that LCFF

1 calculations are not to be considered under this condition.)

2 The increase of facilities cost is discussed in Criterion 7, below.

3 **District Recommendation:** The condition that the proposed transfer will not result in any  
 4 significant increase in costs to the State due to the proposed transfer of territory may not be  
 5 substantially met.

6 6. The Proposed Reorganization Will Continue to Promote Sound Education  
 7 Performance and Will Not Significantly Disrupt the Educational Programs in the  
 8 Affected Districts.

9 Staff members of the MDUSD believe that a transfer of this territory would affect the  
 10 educational performance of their students or significantly disrupt the educational programs for the  
 11 students of the proposed new district. The District is currently reviewing programs in light of the  
 12 proposed reorganization and has not completed its full review. There will be some examples and  
 13 preliminary data provided at the public hearings on May 2 and 3, 2017.

14 Nevertheless, in December 2016, the Special Education Department did an analysis of the  
 15 possible effects showing that significant programmatic changes would lead to less programming  
 16 for the new proposed district. (Analysis of Northgate Related Special Education Programs,  
 17 December 2016, **Exhibit 4.**) This report highlights that programs and specialized staff are often  
 18 shared among multiple sites which are not in alignment with the proposed territory transfer. This  
 19 may result in the loss of detailed individual knowledge for students in the most need.

20 **District Recommendation:** The condition that the proposed reorganization will continue  
 21 to promote sound education performance and will not significantly disrupt the educational  
 22 programs in the districts affected may not be substantially met.

23 7. Any Increase in School Facilities Costs as a Result of the Proposed Reorganization  
 24 Will Be Insignificant and Otherwise Incidental to the Reorganization.

25 As noted above, the creation of a new unified district will require the creation of new  
 26 administrative support structures and departments along with acquisition of new facilities to house  
 27 those operations. See Criterion 3, above.

28 MDUSD has issued all of the general obligation bonds available to it, which will make this

1 source of financing unavailable to the new proposed district. It is not clear at this juncture whether  
 2 enough bonding capacity exists in any new unified district to provide facilities occasioned by the  
 3 reorganization. Also, once again, there appears to be little open, unused property that is within the  
 4 proposed territory which could be used for a district office and support services, forcing the need  
 5 to acquire property at what would likely be high market prices.

6 **District Recommendation:** The condition that any increase in school facilities cost will  
 7 be insignificant or otherwise incidental to the proposed transfer of territory may not be  
 8 substantially met.

9 8. The Proposed Reorganization is Primarily Designed for Purposes Other than to  
 10 Significantly Increase Property Values.

11 The petitioner and her organization have stated a purpose for this transfer of territory.  
 12 However, the petition contains only conclusory language about a smaller and “more accountable”  
 13 school district, improving academic achievement, and more community support. As noted above,  
 14 the District is in the process of analyzing the 159 page report issued by Northgate CAPS on  
 15 April 21, 2017 and will have more comments as that analysis proceeds.

16 As to this condition, it may be that the District will engage in a study of how much  
 17 property values would increase if the proposed new district is formed. It is somewhat difficult at  
 18 this time to make a determination whether or not this condition may be substantially met.

19 **District Recommendation:** The condition that the proposed reorganization is primarily  
 20 designed for purposes other than to significantly increase property values will need more research  
 21 and study before a conclusion may be drawn.

22 9. The Proposed Reorganization Will Continue to Promote Sound Fiscal Management  
 23 and Not Cause a Substantial Negative Effect on the Fiscal Status of the Affected  
 24 Districts.

25 MDUSD has endeavored during the Great Recession and after to operate in a fiscally  
 26 prudent manner. It has, unlike some other school districts, maintained a prudent reserve and  
 27 operated the school programs within its means. It has been able to reinstate District funded health  
 28

1 care coverage for employees and is now able to provide substantial salary increases for all of its  
2 bargaining units after many years of no salary increases. Given the current uncertain fiscal climate  
3 after three years of increased State support, school districts must carefully plan for the next three  
4 years as the State is projecting a slowing economy in the immediate future. (See MDUSD,  
5 Second Interim Report, dated March 13, 2017, at <http://www.mdusd.org/fiscalhome>.)

6 The new proposed district would incur, at a minimum, substantial costs in creating new  
7 administrative and school support systems and the reconstitution of legally required special  
8 education programs. Also, as noted in Criterion 7, above, it appears there will be a significant  
9 increase in facilities cost and it is unclear whether sufficient funds would be available to cover  
10 those costs.

11 As to ongoing costs, there is the annual LCFF revenue per ADA for each enrolled student  
12 and it has been projected to be less for the new proposed district than is currently provided to  
13 MDUSD. The per pupil funding rate will drop from \$8,836.00 to the estimated per pupil funding  
14 for the proposed new district at \$8,150.00 per student. (See Information Required under  
15 Education Code section 35705.5(b) dated April 21, 2017.) Given its smaller size and the lower  
16 LCFF ADA, the new proposed district will face daunting times during its initial setup and for an  
17 ongoing period of time after reorganization.

18 The condition in question requires that the transfer of territory promote sound fiscal  
19 management and not cause a substantial negative effect on the fiscal status of any new district.  
20 The proposed petition and new district do not provide for sound fiscal management and there will  
21 be a substantial negative effect for those students attending that district.

22 **District Recommendation:** The condition that the proposed transfer of territory will  
23 continue to promote sound fiscal management and not cause a substantial negative effect on the  
24 fiscal status of the proposed district or any existing district affected by the proposed reorganization  
25 may not be substantially met.

26 10. Any Other Criteria as the Board May, by Regulation, Prescribe.

27 During the review of this matter, the County Committee may consider and apply California  
28

1 Code of Regulations, title 5, section 18573. It states:

2           Exceptional Situation: As provided in Education Code section  
3           35753, subdivision (b), [t]he state board may approve a proposal for  
4           the reorganization of school districts if the state board determines  
5           that it is not practical or possible to apply the criteria of this section  
6           literally, and that the circumstances with respect to the proposals  
7           provide an exceptional situation sufficient to justify approval of the  
8           proposals.

6           **District Recommendation:** There appear to be no exceptional facts or conditions that  
7           would trigger the analysis of whether it is not practical or possible to apply the statutory criteria.

8 G.       The County Committee’s Authority.

9           The Committee has the duty to review data, create an administrative record, and determine  
10          if the nine operative criteria are substantially met.

11          Even if the nine operative criteria are found to be substantially met, the statutory scheme  
12          still provides the discretion to the County Committee to recommend approval or disapproval of the  
13          petition and the plans and recommendations prior to transfer to SBE under section 35708.

15 Dated: May \_\_, 2017

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: \_\_\_\_\_  
Lawrence M. Schoenke  
Attorneys for MT. DIABLO  
UNIFIED SCHOOL DISTRICT

# EXHIBIT 1



**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
**Resolution No. 16/17-28**  
**Regarding Pending Petition for District Reorganization**  
**Northgate Area**

**Whereas,** Education Code section 35710 permits members of a community to petition the County Committee on School District Organization to form a new school district from an existing one, and

**Whereas,** many factors and ten criteria must be considered when making this decision by the County Committee on School District Organization and, possibly reviewed by the State Board of Education, and ultimately, a general election.

**Whereas,** most importantly, our ability to offer the best quality education to all of our students in educational environments which embrace inclusion; celebrate all students; promote respect, collaboration, innovation and creativity, and that children may suffer greatly if such a division were to occur, and

**Whereas,** there are many known and unknown effects and impacts on the students, parents, staff, and community on division of this school district into two school districts, and

**Whereas,** there is concern about the potential that such a separation would have for segregating students by race, ability, and other student characteristics, and


**Therefore, Be it Resolved** that the Governing Board of the Mt. Diablo Unified School District opposes the petition of the Northgate CAPS organization to divide the District, and

**Be it Further Resolved** that the Superintendent of the Mt. Diablo Unified School District or her designees take appropriate actions to oppose said petition, inform the public on this matter, and to present said opposition in any subsequent administrative proceedings on this matter.

This Resolution was adopted by the Governing Board by the following vote on January 23, 2017, at a Regular Meeting of the Governing Board of the Mt. Diablo Unified School District:

AYES: 5  
NOES: 0  
ABSENT: 0  
ABSTAIN: 0

ATTEST:

  
Nellie Meyer, Secretary, Governing Board

# EXHIBIT 2



California Department of Education  
Educational Demographics Unit

CDE » DataQuest » Enrollment Report

## Enrollment by Ethnicity for 2016-17

### District and School Enrollment by Ethnicity

Report:

Year:

District:

Gender:

Type:

### Mt. Diablo Unified Report

(Note: Data for uncertified district schools will not be included in the district reports however, Independent Reporting Charters that have certified will be displayed on the district report even if the authorizing District has not certified their data.)

School	Code	Hispanic or Latino of Any Race	American Indian or Alaska Native, Not Hispanic	Asian, Not Hispanic	Pacific Islander, Not Hispanic	Filipino, Not Hispanic	African American, Not Hispanic	White, not Hispanic	Two or More Races, Not Hispanic	Not Reported	Total
<a href="#">Avers Elementary</a>	6003958	132	2	32	1	12	17	189	50	12	447
<a href="#">Bancroft Elementary</a>	6003966	120	0	87	3	15	8	287	63	15	598
<a href="#">Bel Air Elementary</a>	6003974	368	1	18	16	5	93	23	15	21	560
<a href="#">Cambridge Elementary</a>	6003982	609	0	10	4	3	10	10	2	12	660
<a href="#">College Park High</a>	0731646	467	6	200	11	119	70	1,078	41	62	2,054
<a href="#">Concord High</a>	0731836	715	9	74	4	109	67	465	27	19	1,489
<a href="#">Crossroads High (Alternative)</a>	0730416	30	0	0	0	2	4	1	0	0	37
<a href="#">Delta View Elementary</a>	0106088	249	2	112	12	114	58	45	53	14	659
<a href="#">Diablo Community Day</a>	0730655	12	0	0	0	1	0	4	0	1	18
<a href="#">Diablo View Middle</a>	6111504	139	4	49	1	34	21	428	40	15	731
District Office	0000000	27	0	2	0	0	1	28	4	1	63
<a href="#">Eagle Peak Montessori</a>	6118087	36	0	27	0	8	6	122	35	0	234
<a href="#">El Dorado Middle</a>	6004030	538	5	29	5	38	30	212	35	9	901
<a href="#">El Monte Elementary</a>	6004048	212	2	20	6	16	20	124	24	19	443
<a href="#">Fair Oaks Elementary</a>	6004055	207	0	26	3	8	19	37	10	21	331
<a href="#">Foothill Middle</a>	6004063	118	2	140	9	36	10	556	102	17	990

<a href="#">Gateway High (Continuation)</a>	0730333	21	0	0	0	0	4	1	0	2	28
<a href="#">Gregory Gardens Elementary</a>	6112395	139	1	49	1	11	9	139	39	15	403
<a href="#">Hidden Valley Elementary</a>	6004097	280	0	48	1	40	18	358	110	17	872
<a href="#">Highlands Elementary</a>	6004105	131	0	52	2	25	9	279	56	43	597
<a href="#">Horizons School: Independent Study</a>	0730317	37	0	18	1	7	5	77	6	7	158
<a href="#">Meadow Homes Elementary</a>	6004154	729	0	19	5	12	11	14	3	55	848
<a href="#">Monte Gardens Elementary</a>	6004162	160	1	43	0	41	21	202	53	4	525
<a href="#">Mountain View Elementary</a>	6004170	171	2	12	1	19	16	159	34	26	440
<a href="#">Mt. Diablo Elementary</a>	6004188	121	1	43	0	24	13	369	51	199	821
<a href="#">Mt. Diablo High</a>	0734566	863	4	74	26	86	132	121	22	16	1,344
<a href="#">District Non-Public Non-Sectarian Schools</a>	0000001	25	0	1	1	2	14	91	5	2	141
<a href="#">Northgate High</a>	0730044	160	8	265	16	91	29	903	58	28	1,558
<a href="#">Oak Grove Middle</a>	6004196	582	0	17	4	18	12	27	4	28	692
<a href="#">Olympic Continuation High</a>	0734764	163	1	4	2	3	36	62	10	7	288
<a href="#">Pine Hollow Middle</a>	6004220	207	7	53	1	38	14	225	44	8	597
<a href="#">Pleasant Hill Elementary</a>	6004246	132	0	51	1	20	11	339	73	30	657
<a href="#">Pleasant Hill Middle</a>	6114904	340	1	53	9	38	24	364	47	33	909
<a href="#">Prospect High (Continuation)</a>	0730358	25	0	1	0	1	2	16	1	0	46
<a href="#">Rio Vista Elementary</a>	6096226	439	1	16	2	12	36	16	18	14	554
<a href="#">Riverview Middle</a>	6004261	581	1	25	10	28	109	29	20	5	808
<a href="#">Sequoia Elementary</a>	6004253	102	2	79	1	32	14	248	37	13	528
<a href="#">Sequoia Middle</a>	6105357	341	0	90	5	83	29	320	55	9	932
<a href="#">Shore Acres Elementary</a>	6004295	456	1	8	0	3	23	23	7	18	539
<a href="#">Silverwood Elementary</a>	6004303	166	1	40	4	43	18	150	55	36	513
<a href="#">Strandwood Elementary</a>	6004311	104	0	43	1	11	3	385	60	27	634
<a href="#">Summit High (Continuation)</a>	0730424	54	1	4	2	2	9	31	2	1	106
<a href="#">Sun Terrace Elementary</a>	6004329	315	1	19	16	18	22	78	33	20	522
<a href="#">Sunrise (Special Education)</a>	6004238	14	0	0	0	0	6	12	4	3	39
<a href="#">Valhalla Elementary</a>	6004337	125	0	53	3	23	15	260	52	50	581
<a href="#">Valle Verde Elementary</a>	6004345	64	0	72	3	16	5	256	53	28	497
<a href="#">Valley View Middle</a>	6004352	316	0	74	7	53	15	305	51	15	836
<a href="#">Walnut Acres Elementary</a>	6004360	71	0	75	0	30	3	348	84	32	643
<a href="#">Westwood Elementary</a>	6004378	140	1	12	4	12	13	105	29	16	332
<a href="#">Woodside Elementary</a>	6004394	141	1	25	2	21	5	130	29	13	367
<a href="#">Wren Avenue Elementary</a>	6004402	318	2	22	9	22	13	100	16	21	523
<a href="#">Ygnacio Valley Elementary</a>	6004410	392	0	8	4	15	7	24	20	5	475
<a href="#">Ygnacio Valley High</a>	0737809	895	6	37	8	46	65	152	21	16	1,246

Report Total

Level	Code										Total
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		Hispanic or Latino of Any Race	American Indian or Alaska Native, Not Hispanic	Asian, Not Hispanic	Pacific Islander, Not Hispanic	Filipino, Not Hispanic	African American, Not Hispanic	White, not Hispanic	Two or More Races, Not Hispanic	Not Reported	
Mt. Diablo Unified	0761754	13,299	77	2,331	227	1,466	1,224	10,327	1,763	1,100	31,814
<a href="#">Contra Costa Total</a>	07	62,042	557	22,114	1,144	7,421	16,442	56,225	9,662	1,763	177,370
<a href="#">State Total</a>	00	3,378,344	33,369	559,159	29,384	153,670	350,339	1,470,499	207,170	46,302	6,228,236

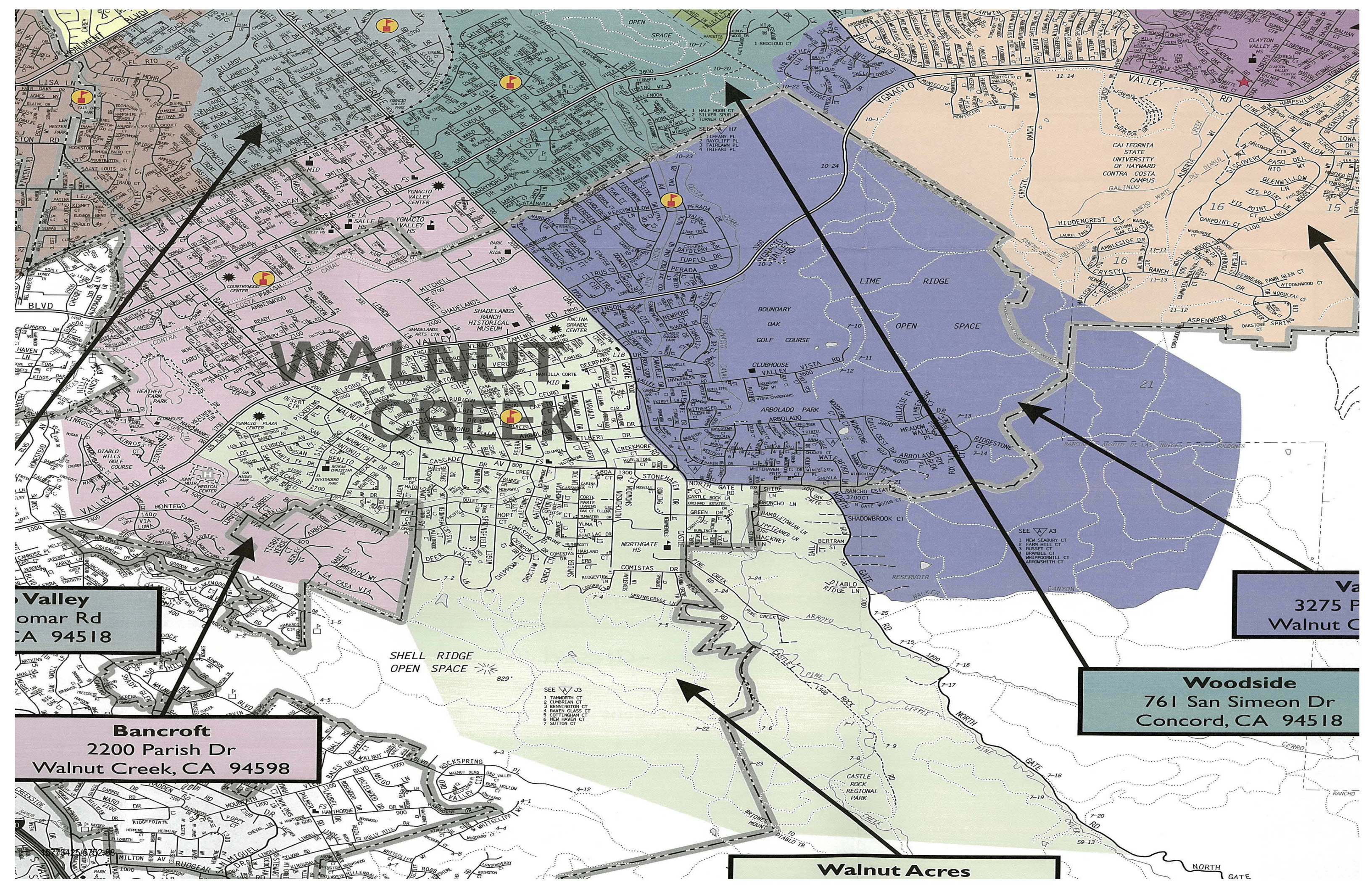
[Download Data](#) Download a semicolon-delimited file of this data to your computer. You will need to select "Save" after selecting the "Download Data" button. Once the file is saved to your computer it may be imported into another software for analysis.

Gender: All, Type: Primary Enrollment

Report generated: 4/22/2017 8:14 PM  
 Source: California Longitudinal Pupil Achievement Data System (CALPADS)

[Web Policy](#)

# EXHIBIT 3



**Valley**  
Comar Rd  
CA 94518

**Valley**  
3275 P  
Walnut C

**Bancroft**  
2200 Parish Dr  
Walnut Creek, CA 94598

**Woodside**  
761 San Simeon Dr  
Concord, CA 94518

**Walnut Acres**

734 75 752 88

SEE  $\nabla$  J3  
1 TAMMERTH CT  
2 CLMIRIAN CT  
3 BENNINGTON CT  
4 RAVEN GLASS CT  
5 COTTINGHAM CT  
6 NEW HAVEN CT  
7 SUTTON CT

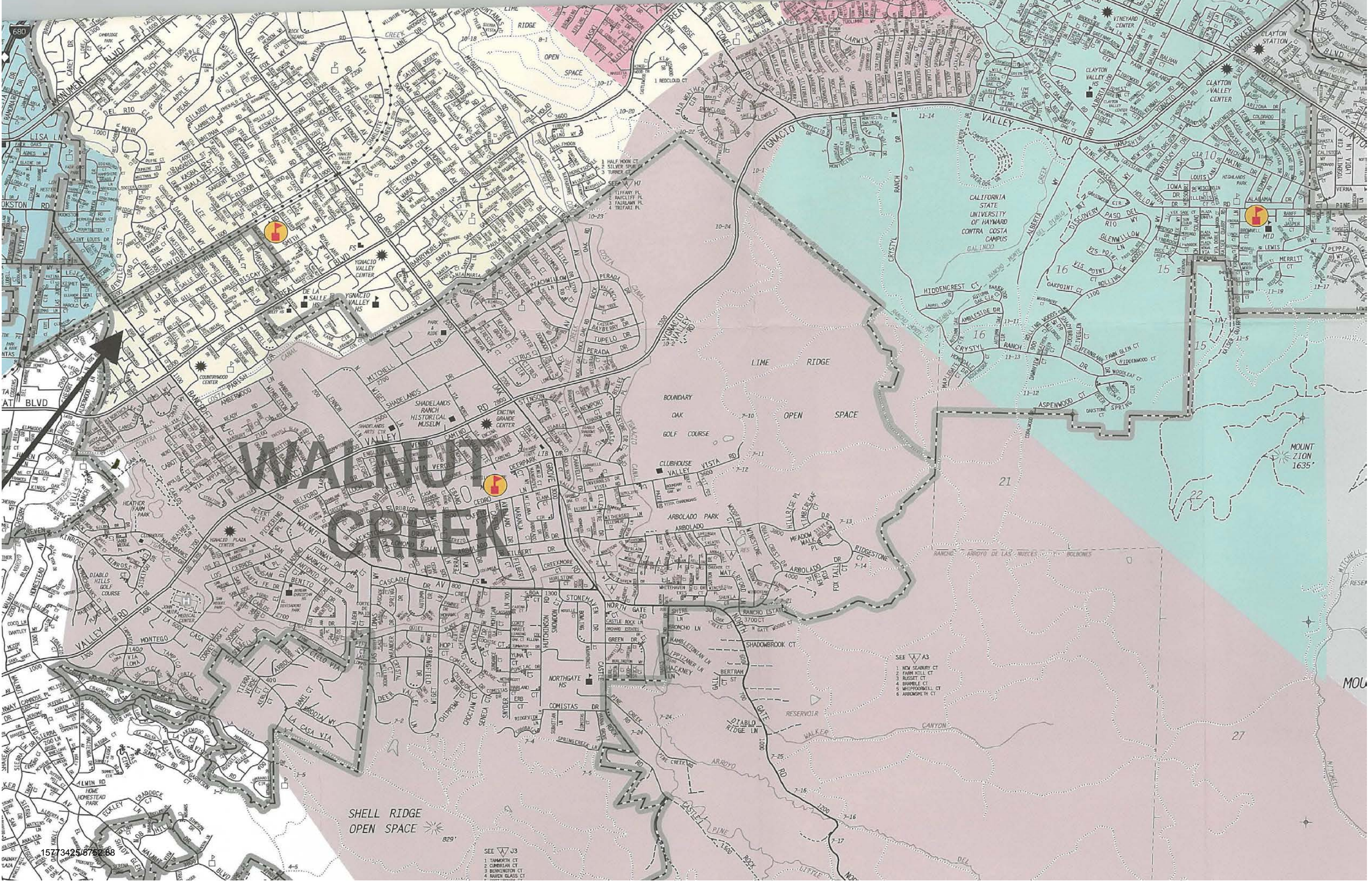
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1 NEW SEABURY CT  
2 FARM HILL CT  
3 PISSET CT  
4 BRAMBLE CT  
5 WHIPPOORWILL CT  
6 APRILMETH CT

SEE  $\nabla$  H7  
1 TIFFANY PL  
2 RAVENCLIFF PL  
3 FAIRLAWN PL  
4 TRIFARI PL

SHELL RIDGE  
OPEN SPACE

LIME  
RIDGE  
OPEN  
SPACE

**WALNUT CREEK**



# WALNUT CREEK

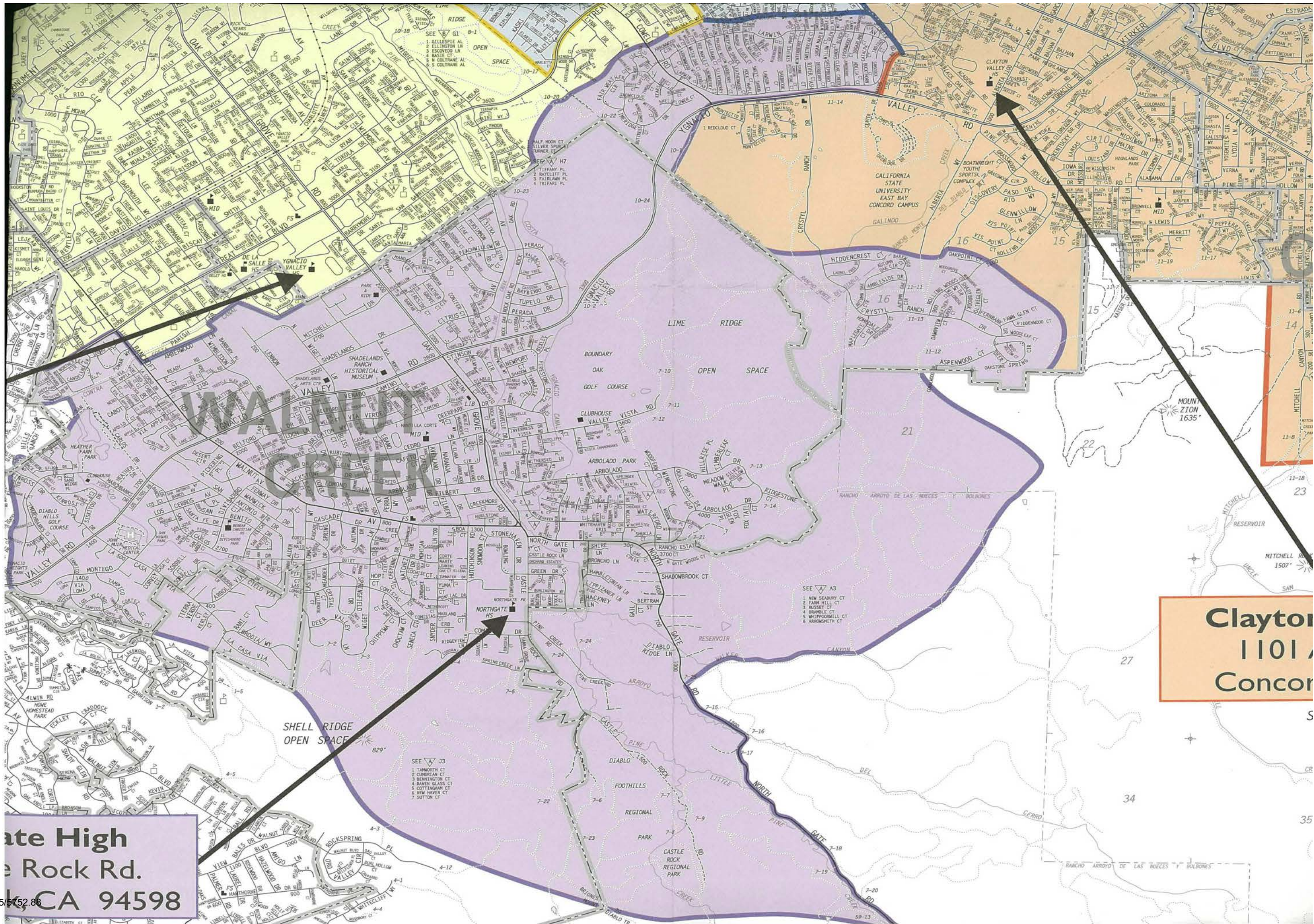
- SEE  $\nabla$  A3
- 1 NEW SEABURY CT
  - 2 FARM HILL CT
  - 3 RUSSET CT
  - 4 BRIMBLE CT
  - 5 WHITPOORNILL CT
  - 6 ARDMOUTH CT

- SEE  $\nabla$  J3
- 1 TAMMOTH CT
  - 2 CAMERIAN CT
  - 3 BENNINGTON CT
  - 4 RAVEN GLASS CT

SHELL RIDGE  
OPEN SPACE

MOUNT  
ZION  
1635'





**Clayton**  
**1101**  
**Concord**

**ate High**  
**e Rock Rd.**  
**k, CA 94598**

# EXHIBIT 4

# MT. DIABLO UNIFIED SPECIAL EDUCATION SERVICES

## IMPORTANT INFORMATION FOR FAMILIES IN THE NORTHGATE FEEDER PATTERN

### MISSION STATEMENT

MDUSD will refine its delivery of special education services to strengthen communication with families, improve assessment of the needs of children, and improve implementation of special education services. The district will provide in-service training to benefit administrators, teachers and assistants to establish a **climate of acceptance** for students with special needs and **to foster integration**.

The Northgate CAPS organization indicates if a Northgate Unified District were to be formed, it would offer Special Education Services equivalent to those of Mt. Diablo Unified. It states that:

- Management of special education services for Northgate students in NUSD would move from MDUSD to Contra Costa County Office of Education SELPA (Special Education Local Planning Area)
  - Covers all students in the County (about 88K) except MDUSD, SRVUSD and WCCUSD.
  - Served over 9,700 students with IEPs (Individualized Education Plans) in 2015-16
- All services are available to NUSD students with IEPs
- Special ed services are mandated by state and federal law, and not subject to district discretion.

### Is this true?

It is true that management of the services for Northgate students would move from MDUSD. They could approach CCSELPA but it is not a foregone conclusion they would become part of the SELPA.

It is true that special education is mandated by state and federal law but the actual programs developed by each district is the responsibility of that district with oversight from SELPA. NUSD would offer programs but they would not be the same if they determined they did not need to be. In a small district it is impractical to offer the breadth of programs offered by a larger district. An example is that MDUSD has four levels of autism programs to differentiate by ability level. In a small district without critical mass, they may only have one or two levels of programming for students with autism or they may choose to send students to neighboring districts or non-public programs out of the Northgate area.

Individual services are dictated by IEP teams, include administrative designees from the district who have the ability to commit district resources. In other words, a district could determine what exact services the student requires so in that regard it is not true that services would look the same.

### What else should we know?

The programs at the five schools that would be part of a Northgate district would be moved to other MDUSD sites, and those students who remain in MDUSD would continue to be able to access them. These include:

- Bancroft Elementary - Mild/Moderate Special Day Class (grades 3-5)
- Valle Verde Elementary – Autism Magnet Program (includes preschool)
- Walnut Acres Elementary – Autism Intensive Program
- Foothill Middle School – Autism Intensive Program, Autism strategic Program, Autism Intensive Program
- Northgate High School - Mild Moderate Special Day Class, Autism Magnet program

Specific to the Autism Magnet Program:

- 13 students are currently in the Autism Magnet Program elsewhere in the district who would move back in and attend school in the new district program rather than their current program.
- 2 currently attend Autism Magnet Programs in the Northgate area who would remain in the new district and be served there rather than in their current program.
- 14 students attend Autism Magnet Program but live elsewhere. These students would have to change schools as the program would be moved to other locations within the district.

## What would be the impact of these changes on students in a Northgate District?

Approximately 200 students reside and attend school in the Northgate area. If the new district could not fund the programs or deemed them unnecessary, the programs would cease to exist for the Northgate district students and those students' programs would change to a program offered in that district or be placed by the new district into programs in other areas.

If a Northgate district were to form, 79 students who live in the area will return from programs located elsewhere in MDUSD due to them not being offered in that area currently. The new district would have to create these programs and students would have to move schools to access them. Some examples include Severe Special Day Class for elementary and middle school students and Mild Moderate Special Day class at middle school. While the students could apply to remain in MDUSD, it would be very challenging for MDUSD to accept all of these students' transfers. There are no Mental Health Programs or Deaf Hard of Hearing Programs in the Northgate area so those students would also be displaced back to a newly-formed, small, district that may not have the programs and/or resources to support them.

Nineteen are non-public and county programs designed to serve students with the most severe disabilities. These programs are very costly to a district and yet a smaller district would likely see these numbers increase due to an inability to create the level of programs needed to serve these students.

A cost estimate to maintain current programs is as shown below. These costs **do not include** speech therapists, psychologists, program specialists, occupational therapists, physical therapists or 1:1 assistance. The new district would also need at least three speech therapists, two psychologists, and other therapists in addition to multiple 1:1 assistants.

Program Type	# of Students	Cost per Student	Classroom Cost
Autism- Magnet Inclusion Program	15	\$40,000	\$600,000.00
Autism-Benchmark Program	2	\$30,000	\$60,000.00
Autism- Strategic Program	8	\$35,000	\$280,000.00
Autism- Intensive Program	2	\$30,000	\$60,000.00
Related Service Only Program	30	\$6,000	\$180,000.00
Resource Program	151	\$4,000	\$604,000.00
Mild Moderate Special Day Class	15	\$22,000	\$330,000.00
Moderate Severe Special Day Class	2	\$22,000	\$44,000.00
Severe Special Day Class	10	\$26,000	\$260,000.00
Home Hospital Program	7	\$10,000	\$70,000.00
Independent Study Program	2	\$10,000	\$20,000.00
Deaf Hard of Hearing Program	1	\$45,000	\$45,000.00
Mental Health Program	5	\$32,000	\$160,000.00
Non Public Schools	16	\$45,000	\$720,000.00
County Office of Education Programs	3	\$47,000	\$141,000.00
Private School Students	12	\$2,000	\$24,000.00
Intensive Speech Preschool	2	\$8,000	\$16,000.00
	283		\$3,614,000.00

For additional information on the impacts of the proposed Northgate District on Special Education Services, please contact:

- Dr. Wendi Aghily, Director of Special Education, [aghilyw@mdusd.org](mailto:aghilyw@mdusd.org), (925) 682-8000, ext. 4047
- Dr. Nellie Meyer, Superintendent, [meyern@mdusd.org](mailto:meyern@mdusd.org), (925) 682-8000, ext. 4000



**Mt. Diablo Unified School District, 1936 Carlotta Dr., Concord, CA 94519**