

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2022 Agenda Item #W-04

## Subject

Request by **three local educational agencies** to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Beverly Hills Unified School District 1-10-2021
* Beverly Hills Unified School District 8-9-2021
* North Monterey County Unified School District 5-9-2021
* Oceanside Unified School District 9-9-2021

## Type of Action

Action, Consent

## Summary of the Issues

The Beverly Hills Unified School District (Beverly Hills USD) is requesting to waive all of California *Education Code (EC)* sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17470, 17472, and 17475, which will allow the district to lease two pieces of property through the Request for Proposal (RFP) process.

The North Monterey County Unified School District (North Monterey County USD) is requesting to waive all of California *EC* sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, 17472, and 17475, which will allow the district to sell three pieces of property in a manner that best serves its schools and community, through the RFP process.

The Oceanside Unified School District (Oceanside USD) is requesting to waive all of California *EC* sections 17472, 17473, and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, and 17475, which will allow the district to sell one piece of property in a manner that best serves their schools and community.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval with the following conditions: 1) that all proposals received be examined and declared by each district’s governing board in a public meeting to allow for public comment prior to any negotiation and/or selection, and 2) that each district's governing board determine and select the most desirable proposal (if any proposal is to be selected at all) in a public meeting, and that the reasons for that determination be discussed in public session and included in the minutes of the meeting.

## Summary of Key Issues

Under provisions of *EC* Section 33050, the districts are requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

### Beverly Hills USD

Beverly Hills USD requests that the specified *EC* sections be waived in order to allow the district to lease two pieces of real property. The first property is located at Gregory Lane and Elm Drive in Beverly Hills and currently provides parking lot space for the Beverly Vista Middle School, but is no longer needed for the district’s sole use. The district plans to seek parties interested in leasing the property, and perhaps granting a portion of the property for use as the district’s parking lot. The district’s governing board declared the property surplus, allowing the district to pursue a lease of the property through the RFP process.

The second property is located at 255 South Lasky Drive in Beverly Hills and is currently being used as the District Office. However, the property no longer meets the needs of the District Office’s operations and the district plans to transfer its District Office operations to a different property. The district’s governing board declared the property surplus to allow district staff to pursue a lease of the property through the RFP process.

The district will work to develop a strategic plan for advertising and marketing both properties in order to solicit proposals. The district will also work closely with legal counsel to ensure that the process by which the properties are leased is fair and open.

The recommended period of each request has been amended to January 14, 2022 through January 14, 2023, to allow the district a full year for lease negotiations, after consultation with the district’s counsel.

### North Monterey County USD

North Monterey County USD requests that the specified *EC* sections be waived in order to allow the district to sell three pieces of real property:

1. District Office, 8142 Moss Landing Road in Moss Landing
2. Moss Landing Middle School, 1815 CA-1 in Moss Landing
3. The Mossy Oak site, Assessor’s Parcel Number 133-371-004, Salinas

The district has determined that the sites are no longer needed for school purposes (with Moss Landing Middle School having closed in 2005 and the Mossy Oak site being a vacant lot in a residential neighborhood) and has declared them surplus. The district wishes to attract potential buyers who will pay the maximum price for the sites as well as enhance the surrounding neighborhoods. Based on past sales of real property in the locations of the sites, the district anticipates attracting more significant interest from potential buyers through an RFP process than the sealed bid process.

### Oceanside USD

Oceanside USD requests that the specified *EC* sections be waived in order to allow the district to sell one piece of real property. The property is located at 333 Garrison Avenue in Oceanside and formerly housed the Garrison Elementary School. On July 31, 2019, the district decided that the Garrison Elementary students and staff would begin the 2019–20 school year at San Luis Rey Elementary School while the district evaluated the cause of sinkholes that were found in playground areas at the site. On April 28, 2020, the District Board of Education accepted the staff recommendation to close the Garrison Elementary School site and place the property into asset management. The district has determined that the site is no longer needed for school purposes and has declared it surplus. The district has developed a strategic plan for soliciting offers for the property and is working closely with legal counsel to seek offers for the purchase of the property in a fair and open manner.

### Demographic Information

Beverly Hills USD has a student population of 3,168 and is located in Los Angeles County.

North Monterey County USD has a student population of 4,594 and is located in Monterey County.

Oceanside USD has a student population of 19,749 and is located in San Diego County.

**Because these are general waivers, if the State Board of Education (SBE) decides to deny the waivers, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information Web page at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.>

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

The SBE has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The districts are requesting to waive the same or similar provisions for the sale or lease of surplus property.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the districts to maximize revenue from the saleor lease of the properties.

The districts have certified that all of the sites have been owned for more than 10 years and therehave been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (4 pages)
* **Attachment 2:** Beverly Hills Unified School District General Waiver Request 1-10-2021 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Beverly Hills Unified School District General Waiver Request 8-9-2021 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** North Monterey County Unified School District General Waiver Request 5-9-2021 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** Oceanside Unified School District General Waiver Request 9-9-2021 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *EC* Section 17455 et seq.

| **Waiver Number** | **District** | **Properties** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-10-2021 | Beverly Hills Unified School District | Gregory Lane and Elm Drive, Beverly Hills, CA 90212 (currently provides parking lot space for the Beverly Vista Middle School) | **Requested:** November 1, 2021 to November 2, 2022  **Recommended:** January 14, 2022 to January 14, 2023 | 7/13/2021 | 7/13/2021  Public Hearing Advertised: Notice of the hearing was posted at the District Office, the surplus property, and the District website. | Beverly Hills Ed. Assoc. (BHEA) Instructional Assistants Carol Courtney, President 9/10/2021 **Neutral**  BHEA Alana Castanon, President  9/10/2021  **Neutral**  BHEA Office Technical & Business Services Andre Law, President  9/10/2021  **Neutral**  California School Employees Association Jose Celis Bautista, President  9/10/2021  **Neutral** | District's Real Property Advisory Committee 6/29/2021 **No Objections** |
| 8-9-2021 | Beverly Hills Unified School District | 255 South Lasky Drive, Beverly Hills CA 90212 (currently used as the District Office) | **Requested:** October 1, 2021 to October 2, 2022  **Recommended:** January 14, 2022 to January 14, 2023 | 5/11/2021 | 5/11/2021  Public Hearing Advertised: Notice of the hearing was posted at the District Office (the surplus property) and the District website. | Beverly Hills Ed. Assoc. (BHEA) Instructional Assistants Carol Courtney, President 9/10/2021 **Neutral**  BHEA Alana Castanon, President  9/10/2021  **Neutral**  BHEA Office Technical & Business Services Andre Law, President  9/10/2021  **Neutral**  California School Employees Association Jose Celis Bautista, President  9/10/2021  **Neutral** | District Surplus Property Advisory Committee 4/19/2021 **No Objections** |
| 5-9-2021 | North Monterey County Unified School District | (1) District Office, 8142 Moss Landing Road, Moss Landing, CA  (2) Moss Landing Middle School, 1815 CA-1, Moss Landing, CA  (3) Mossy Oak site, Assessor’s Parcel Number 133-371-004, Mossy Oak Place, Salinas, CA | **Requested:** November 4, 2021 to November 4, 2023  **Recommended:** January 14, 2022 to November 4, 2023 | 9/16/2021 | 9/16/2021  Public Hearing Advertised: Notice in the Monterey Herald that ran for seven days. Also posted at the District Office location, North Monterey County High School the location of the District’s Board meetings and the District’s website. | California School Employees Association Ray Torres, CSEA President 9/03/2021 **Support**  North Monterey County Federation of Teachers Kelly Moore, NMCFT President 9/01/2021 **Support** | District's School Site Council, Facilities Advisory Committee, Bond Oversight Committee, and others 9/2/2021 **No Objections** |
| 9-9-2021 | Oceanside Unified School District | 333 Garrison Avenue, Oceanside, CA 92054, formerly housed the Garrison Elementary School | **Requested:** January 14, 2022 to January 14, 2025  **Recommended:** January 14, 2022 to January 12, 2024 | 9/14/2021 | 9/14/2021  Public Hearing Advertised: Notice of the public hearing was published in the San Diego Union Tribune. | California School Employees Association Herlinda Ahmad, President 9/13/2021 **Neutral**  Oceanside (California) Teachers Association Tiffany Cooper-Ortega, President 9/13/2021 **Support** | Surplus Property Advisory Committee (7-11) 8/26/2021 **No Objections** |

Created by the California Department of Education

October 2021

# Attachment 2: **Beverly Hills Unified School District General** **Waiver Request 1-10-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1964311

Waiver Number: 1-10-2021

Active Year: 2021

Date In: 10/12/2021 12:48:17 AM

Local Education Agency: Beverly Hills Unified

Address: 255 South Lasky Dr.

Beverly Hills, CA 90212

Start: 11/1/2021

End: 11/2/2022

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17470, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Beverly Hills Unified School District desires to waive the following sections and portions of the *Education Code* (“*EC*”) to allow the District to pursue a lease of the Property. Specifically, the District requests that the language in brackets [] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district [, and shall be made in the manner provided by this article].

Rationale: The District seeks to remove this language to the extent it suggests the District’s lease of the property must be “made in the manner provided by this article” because the District’s request for a waiver of the other portions of the *Education Code*, as set forth in the waiver application, as well as the District’s request to use the Request for Proposal process, will create a process that is not “in the manner provided by this article.” Thus, the District requests to waive only this portion of Section 17455. The remaining portion of Section 17455 will still apply to the District’s process.

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of theminimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language indicates that the District must pass a resolution setting a time by which the District will open all sealed bids for the Property. Since the District will not be conducting a bid process, and cannot predict the timing of the RFP process and its subsequent negotiations with proposers, it cannot at the time of adopting the resolution contemplated by Section 17466 know when proposals must be brought back to the governing board for consideration. After passing a resolution that authorizes the District to go forward with the RFP process, the District intends to solicit proposals for the Property and bring proposals to the governing board to consider the approval of an agreement.

*EC* 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid,] which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language indicates the District will receive sealed proposals and oral bids to purchase the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to negotiate the lease of the Property with an interested purchaser.

*EC* 17470. (a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail [, at least 60 days prior to the meeting]. (b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language indicates the Board would be setting a specific meeting to receive proposals for the lease of the Property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* 17472. At the time and place fixed in the resolution for the meeting of the governing body, all [sealed] proposals which have been received shall, in public session, [be opened], examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language requires the District to obtain sealed bids and select the highest bid. The District is seeking a waiver to allow it to seek proposals and negotiate with interested parties to select the proposal that best meets the needs of the District. The District may select a proposal that offers a lower price but agrees to terms that are more beneficial to the District. Thus, the District seeks to eliminate the language which requires it to enter into an agreement with the highest bidder.

*EC* 17473. WAIVE ENTIRE SECTION [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17474. WAIVE ENTIRE SECTION [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17475. The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting [held within the 10 days [next] following].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into an agreement that provides the most benefit to the District. The deleted language indicates that a school district’s governing board shall accept the highest bid at the bid hearing or within the next 10 days. The District will not conduct a bid hearing but instead will engage in negotiations with any party submitting a proposal in response to the RFP. Once the negotiations end, and the District identifies the best proposal, the District’s Board will accept the proposal. Thus, the language in this Section requiring the board to accept a bid on the bid date or within 10 days does not apply to the RFP process.

Outcome Rationale: The Beverly Hills Unified School District (“District”) owns real property located between Gregory Way and Elm Drive in Beverly Hills, California that currently provides parking lot space for the District’s Beverly Vista Middle School, located at 200 South Elm Drive, Beverly Hills, CA 90212 (“Property”). The Property is currently used for parking lot space but is no longer needed for the District’s sole use. Thus, the District plans to seek parties interested in leasing the property and perhaps granting a portion for the District’s parking lose. The District’s governing Board declared the Property surplus to allow District staff to pursue a lease of the Property. Education Code section 17466 et seq. requires school districts leasing property to conduct a formal bid hearing process in which the school district solicits bids and then enters into a lease agreement with the winning bidder. The District seeks a waiver of certain portions of the procedure set forth in *Education Code* section 17466 et seq. so it can pursue a lease through an alternative Request for Proposal (“RFP”) process. This RFP process will allow the District to issue an RFP package describing the Property and asking interested parties to submit proposals describing the terms and conditions of their proposed lease of the property. District staff, in consultation with legal counsel, will then review the RFP responses and determine which offer provides the most beneficial terms to the District by considering factors in addition to price, such as deposit structure, length of escrow, and the use of the Property. The bid hearing process requires the District to pursue a lease of the Property and then limits the District’s selection to the highest bidder. The District needs the ability to be flexible and work with interested parties to determine whether a lease is in the best interest of the District and establish the terms of the lease agreement. A waiver of the bid hearing process will allow the District to do this through the RFP process. The District will work to develop a strategic plan for advertising and marketing the Property in order to solicit proposals from parties interested in the Property. The District will work closely with legal counsel to develop an RFP seeking proposals for the lease of the Property and develop a process by which the Property is leased is fair and open.

Student Population: 3,168

City Type: Urban

Public Hearing Date: 7/13/2021

Public Hearing Advertised: Notice of the hearing was posted at the District Office, the surplus property, and the District website

Local Board Approval Date: 7/13/2021

Community Council Reviewed By: District's Real Property Advisory Committee

Community Council Reviewed Date: 6/29/2021

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney

E-mail: [smcloughlin@aalrr.com](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\smcloughlin@aalrr.com)

Telephone: 562-519-7573

Bargaining Unit Date: 9/10/2021

Name: Beverly Hills Ed. Assoc. Instructional Assistants

Representative: Carol Courtney

Title: President

Phone: [alaw@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\alaw@bhusd.org)

Position: Neutral

Bargaining Unit Date: 9/10/2021

Name: Beverly Hills Education Association

Representative: Alana Castanon

Title: President

Phone: [acastanon@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\acastanon@bhusd.org)

Position: Neutral

Bargaining Unit Date: 9/10/2021

Name: BHEA Office Technical & Business Services

Representative: Andre Law

Title: President

Phone: [alaw@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\alaw@bhusd.org)

Position: Neutral

Bargaining Unit Date: 9/10/2021

Name: California School Employees Association

Representative: Jose Celis Bautista

Title: President

Phone: [jcelisbautista@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\jcelisbautista@bhusd.org)

Position: Neutral

# Attachment 3: **Beverly Hills Unified School District General** **Waiver Request 8-9-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1964311

Waiver Number: 8-9-2021

Active Year: 2021

Date In: 9/27/2021 3:05:39 AM

Local Education Agency: Beverly Hills Unified

Address: 255 South Lasky Dr.

Beverly Hills, CA 90212

Start: 10/1/2021

End: 10/2/2022

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17470, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Beverly Hills Unified School District desires to waive the following sections and portions of the *Education Code* (“*EC*”) to allow the District to pursue a lease of the Property. Specifically, the District requests that the language in brackets [] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district [, and shall be made in the manner provided by this article].

Rationale: The District seeks to remove this language to the extent it suggests the District’s lease of the property must be “made in the manner provided by this article” because the District’s request for a waiver of the other portions of the *Education Code*, as set forth in the waiver application, as well as the District’s request to use the Request for Proposal process, will create a process that is not “in the manner provided by this article.” Thus, the District requests to waive only this portion of Section 17455. The remaining portion of Section 17455 will still apply to the District’s process.

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of theminimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language indicates that the District must pass a resolution setting a time by which the District will open all sealed bids for the Property. Since the District will not be conducting a bid process, and cannot predict the timing of the RFP process and its subsequent negotiations with proposers, it cannot at the time of adopting the resolution contemplated by Section 17466 know when proposals must be brought back to the governing board for consideration. After passing a resolution that authorizes the District to go forward with the RFP process, the District intends to solicit proposals for the Property and bring proposals to the governing board to consider the approval of an agreement.

*EC* 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid,] which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language indicates the District will receive sealed proposals and oral bids to purchase the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to negotiate the lease of the Property with an interested purchaser.

*EC* 17470. (a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail [, at least 60 days prior to the meeting]. (b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language indicates the Board would be setting a specific meeting to receive proposals for the lease of the Property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* 17472. At the time and place fixed in the resolution for the meeting of the governing body, all [sealed] proposals which have been received shall, in public session, [be opened], examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language requires the District to obtain sealed bids and select the highest bid. The District is seeking a waiver to allow it to seek proposals and negotiate with interested parties to select the proposal that best meets the needs of the District. The District may select a proposal that offers a lower price but agrees to terms that are more beneficial to the District. Thus, the District seeks to eliminate the language which requires it to enter into an agreement with the highest bidder.

*EC* 17473. WAIVE ENTIRE SECTION [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17474. WAIVE ENTIRE SECTION [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17475. The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting [held within the 10 days [next] following].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the Property. Specifically, the District desires to lease the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into an agreement that provides the most benefit to the District. The deleted language indicates that a school district’s governing board shall accept the highest bid at the bid hearing or within the next 10 days. The District will not conduct a bid hearing but instead will engage in negotiations with any party submitting a proposal in response to the RFP. Once the negotiations end, and the District identifies the best proposal, the District’s Board will accept the proposal. Thus, the language in this Section requiring the board to accept a bid on the bid date or within 10 days does not apply to the RFP process.

Outcome Rationale: The Beverly Hills Unified School District (“District”) owns real property located at 255 South Lasky Drive, Beverly Hills CA 90212 known as the District Office (“Property”). The Property is currently used for the District Office but no longer meets the needs of the District Office operations. Thus, the District plans to transfer its District Office operations to a different property. The District’s governing Board declared the Property surplus to allow District staff to pursue a lease of the Property as part of its overall plan to transfer its District Office operations to a different location. Education Code section 17466 et seq. requires school districts leasing property to conduct a formal bid hearing process in which the school district solicits bids and then enters into a lease agreement with the winning bidder. The District seeks a waiver of certain portions of the procedure set forth in Education Code section 17466 et seq. so it can pursue a lease through an alternative Request for Proposal (“RFP”) process. This RFP process will allow the District to issue an RFP package describing the Property and asking interested parties to submit proposals describing the terms and conditions of their proposed lease of the property. District staff, in consultation with legal counsel, will then review the RFP responses and determine which offer provides the most beneficial terms to the District by considering factors in addition to price, such as deposit structure, length of escrow, and the use of the Property. The bid hearing process requires the District to pursue a lease of the Property and then limits the District’s selection to the highest bidder. The District needs the ability to be flexible and work with interested parties to determine whether a lease is in the best interest of the District and establish the terms of the lease agreement. A waiver of the bid hearing process will allow the District to do this through the RFP process. The District will work to develop a strategic plan for advertising and marketing the Property in order to solicit proposals from parties interested in the Property. The District will work closely with legal counsel to develop an RFP seeking proposals for the lease of the Property and develop a process by which the Property is leased is fair and open.

Student Population: 3,168

City Type: Urban

Public Hearing Date: 5/11/2021

Public Hearing Advertised: Notice of the hearing was posted at the District Office (the surplus property) and the District website

Local Board Approval Date: 5/11/2021

Community Council Reviewed By: District Surplus Property Advisory Committee

Community Council Reviewed Date: 4/19/2021

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney

E-mail: [smcloughlin@aalrr.com](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\smcloughlin@aalrr.com)

Telephone: 562-519-7573

Bargaining Unit Date: 9/10/2021

Name: Beverly Hills Ed. Assoc. Instructional Assistants

Representative: Carol Courtney

Title: President

Phone: [alaw@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\alaw@bhusd.org)

Position: Neutral

Bargaining Unit Date: 9/10/2021

Name: Beverly Hills Education Association

Representative: Alana Castanon

Title: President

Phone: [acastanon@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\acastanon@bhusd.org)

Position: Neutral

Bargaining Unit Date: 9/10/2021

Name: BHEA Office Technical & Business Services

Representative: Andre Law

Title: President

Phone: [alaw@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\alaw@bhusd.org)

Position: Neutral

Bargaining Unit Date: 9/10/2021

Name: California School Employees Association

Representative: Jose Celis Bautista

Title: President

Phone: [jcelisbautista@bhusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\jcelisbautista@bhusd.org)

Position: Neutral

# Attachment 4: **North Monterey County Unified School District General** **Waiver Request 5-9-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 2773825

Waiver Number: 5-9-2021

Active Year: 2021

Date In: 9/22/2021 2:47:00 PM

Local Education Agency: North Monterey County Unified

Address: 8142 Moss Landing Rd.

Moss Landing, CA 95039

Start: 11/4/2021

End: 11/4/2023

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050-33053

*Education Code* or *CCR* to Waive: The North Monterey County Unified District desires to waive the following sections and portions of the *Education Code* ("*EC*"). Specifically, the District requests that the language in brackets [] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district [, and shall be made in the manner provided by this article]

Rationale: The District requests the specified *Education Code* sections be waived in order to allow the District to maximize the return on the sale of three of its sites in a manner that best serves its schools and the community. The three sites in question are: (1) the District Office, 8142 Moss Landing Road, Moss Landing, CA 95039; (2) Moss Landing Middle School, 1815 CA-1, Moss Landing, CA 95039; and (3) the Mossy Oak site, Assessor’s Parcel Number 133-371-004, Mossy Oak Place, Salinas, CA 93907 (“Sites”).

The District would like to offer the Sites for sale through a Request for Proposals (“RFP”) process followed by further negotiations using the services of a broker who will advertise and solicit proposals from potential buyers. The article referenced by *Education Code* section 17455 consists of *Education Code* sections 17455 through 17484, which contain provisions regarding the sale or lease of real property that are not in the best interest of the District, its schools, or the local community and thus are inconsistent with the manner in which the District hopes to market the Sites.

The District will work closely with consultants to ensure that the process by which the Sites are sold is fair, open, and competitive. The process the District will use will be designed to obtain the best result for the District, its schools, and the community.

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds votes of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased] and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

Rationale: The language to be waived provides for a minimum price or rental and requires sealed proposals to purchase or lease the Sites. This requirement restricts the District’s flexibility in negotiating price, payments, and other terms that may yield greater economic and other benefits to the District than a sealed bid process.

*EC* 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid,] which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The language to be waived requires that the District receive sealed proposals and oral bids to purchase the Sites at an identified meeting of the District’s governing board (“Board”). The District is requesting that the sealed proposal and oral bidding requirements be waived, allowing the District to sell the Sites via an RFP process.

*EC* 17469. Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district[, not less than 15 days before the date of the meeting, and by publishing the notice not less than once a week for three successive weeks before the meeting in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein].

Rationale: Since the District is requesting to waive the requirement that the resolution adopted pursuant to Education Code section 17466 fix a time not less than three weeks thereafter for a public meeting at which sealed proposals will be received and considered, it also seeks to waive the corresponding provisions in Education Code section 17469.

*EC* 17470. (a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail [, at least 60 days prior to the meeting].

(b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The language to be waived assumes that the Board would set a specific meeting to receive proposals for the purchase of the Sites. Such a requirement, however, will be removed pursuant to the language waived within *Education Code* section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owners of the proposed sale of the Sites, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* 17472. [At the time and place fixed in the resolution for the meeting of the governing body, all sealed] Proposals which have been received shall, in public session, be [opened,] examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.]

Rationale: With a waiver of the requirement that sealed proposals be received, and that the highest bidder be awarded the contract, the District will be able to sell the Sites to the party that presents the most favorable proposal to the District. The Board would, therefore, be able to sell to the party submitting the proposal that best meets the District’s and the local community’s needs. By removing the requirement that an oral bid be accepted, the District would be able to determine what constitutes the most desirable proposal by reviewing written offers.

*EC* 17473. [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The District asks that this entire section be waived because the District, in negotiating agreements to sell the Sites, will not be accepting oral bids.

*EC* 17474. [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The District asks that this entire section be waived because the District, in negotiating agreements to sell the Sites, will not be accepting oral bids.

*EC* 17475. The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting [held within the 10 days next following].

Rationale: Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in disposing of the Sites. The District will implement a public process for determining the most desirable proposals that best meet the needs of the District and the local community.

Outcome Rationale: The District desires to have the requested Education Code sections, or portions thereof, waived because the waiver of these sections will allow the District to best meet its needs and the needs of the local community while maximizing the District’s return on the sale of the Sites. The District has determined that the Sites are no longer needed for school purposes. The District wishes to attract potential buyers who will both pay the maximum price for the Sites and enhance the surrounding neighborhoods. Based on past sales of real property in the areas and the locations of the Sites, the District anticipates attracting more significant interest from potential buyers through an RFP process than a bid process.

Student Population: 4,594

City Type: Suburban

Public Hearing Date: 9/16/2021

Public Hearing Advertised: Notice in the newspaper that ran for 7 days

Local Board Approval Date: 9/16/2021

Community Council Reviewed By: District's School Site Council, Facilities Advisory Committee, Bond Oversight Committee, and others

Community Council Reviewed Date: 9/2/2021

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Mary Dawson

Position: Assistant Superintendent for Business Services

E-mail: [mary\_dawson@nmcusd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\01%20January%202022\Property\mary_dawson@nmcusd.org)

Telephone: 831-633-3343

Fax: 831-633-5189

Bargaining Unit Date: 9/03/2021

Name: California School Employees Association

Representative: Ray Torres

Title: CSEA President

Phone: 831-595-5901

Position: Support

Bargaining Unit Date: 9/01/2021

Name: North Monterey County Federation of Teachers

Representative: Kelly Moore

Title: NMCFT President

Phone: 831-633-3343

Position: Support

# Attachment 5: Oceanside Unified School District General Waiver Request 9-9-2021

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3773569

Waiver Number: 9-9-2021

Active Year: 2021

Date In: 9/28/2021 5:08:02 PM

Local Education Agency: Oceanside Unified

Address: 2111 Mission Ave.

Oceanside, CA 92058

Start: 1/14/2022

End: 1/14/2025

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17469, 17470, 17472 (all), 17473 (all), 17474 (all), 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Oceanside Unified School District desires to waive the following sections and portions of the Education Code (“EC”). Specifically, the District requests that the language in brackets [] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district [, and shall be made in the manner provided by this article]

Rationale: The language indicating that the sale of the property is to be made in the manner provided by this article should be waived, because the District is asking that several provisions of the article be waived and consequently, the sale or lease will not be made in the manner provided in Article 4.

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds votes of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased] and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

Rationale: The stricken language to be waived provides for the governing board to state a minimum price and the terms upon which the property will be sold or leased. The stricken language also would require specification of a meeting where proposals would be received and considered. The District is requesting that the requirement of stating a minimum price and terms be waived, so that it can receive as many offers as possible without making assumptions about the minimum price or the terms of the sale that could unnecessarily limit the possible range of solutions and proposals. Also, as the District cannot predict in advance the timing of negotiations with interested purchasers, it cannot at the time of adopting the resolution contemplated by this Section 17466, know when proposals must be brought back to the governing board for consideration. The District intends to review a number of proposals for the purchase of the property, and bring all proposals received to the governing board when necessary to consider the approval of a sale.

*EC* 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified [in the resolution]. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid,] which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The stricken language to be waived provides for the District to receive sealed and oral bids to purchase or lease the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed bids and oral bidding to purchase or lease the property be waived, allowing the District to use a proposals process and negotiate the sale or lease of the property with a qualified purchaser.

*EC* 17469. Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district[, not less than 15 days before the date of the meeting, and by publishing the notice not less than once a week for three successive weeks [before the meeting] in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein].

Rationale: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase of the property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to provide notice of its adoption of a resolution of intent to sell the property, but the posting of that resolution and notice in a newspaper would no longer be tied to an established date to receive proposals.

*EC* 17470. (a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail [, at least 60 days prior to the meeting].

(b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest [bid] price.

Rationale: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase or lease of the property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* 17472. [At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.]

Rationale: The stricken language to be waived provides for the District to receive and open sealed proposals and oral bids to purchase or lease the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase or lease the property be waived, allowing the District to use a proposals process and negotiate the sale or lease of the property with a qualified purchaser. This will allow the District to receive and consider a number of proposals and maximize the District’s ability to negotiate the most favorable transaction terms.

*EC* 17473. [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

*EC* 17474. [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

*EC* 17475. The final acceptance by the governing body may be made [either at the same session or at any adjourned session of the same] meeting [held within the 10 days next following].

Rationale: Modification of the section would remove the requirement that the governing board accept a proposal at the same meeting received, and would instead allow the governing board to consider proposals received and, as desired and appropriate, direct further negotiation, and complete the transaction at the time most beneficial to the District.

Outcome Rationale: The Oceanside Unified School District (“District”) owns the parcel of real property located at 333 Garrison Avenue, Oceanside, CA 92054, which formally housed the Garrison Elementary School site referred to herein as (the “Property”). Surplus school buildings remain located on the Property. Currently, the Property is not being used by the District, there are no community groups authorized to use the Property, and the District does not need use of the Property as it has been declared surplus. The District certifies that the District has owned the Property for more than ten (10) years and review of a recent title report of the Property shows that there are no outstanding recorded liens or evidence of improvements funded by monies from the State School Facilities Program within the last ten (10) years. Therefore, pursuant to *Education Code* Section 17462.3, the District has no evidence that financial reimbursement is due to the State Allocation Board.

The District and the City of Oceanside ("City") are cooperating to discuss installation of a lift station on a portion of the Property and the District intends to consider City input to identify a buyer for the remainder of the Property that best benefits District, City and surrounding community goals.

The District wishes to sell the Property in a manner that will provide the District with the most benefit and wishes to consider various offers in order to identify which is in the best interest of the District, when compared based on various factors, including but not limited to, price.

As a result, the District is seeking a waiver of certain portions of the *Education Code* so it can pursue a sale through an informal proposals process. This process will allow the District to publicly solicit and evaluate competitive offers and select the offer that is in the District’s best interest. District staff, in consultation with legal counsel, will review the offers and determine which offer(s) provides the most beneficial terms to the District.

The District needs the ability to be flexible and work with interested parties to determine what type of transactional terms will yield the best result for the District. The requested waiver will allow the District to sell the Property through this more beneficial, flexible process. The District has developed a strategic plan for soliciting offers for the Property and is working closely with legal counsel to seek offers for the purchase of the Property and develop a process to sell the Property in a fair and open manner. The District is requesting a waiver for the term of three years in order to have the ability to complete a sale and close escrow on a purchase that will likely take years to complete. However, the District is open to a shorter-term waiver, with subsequent renewal submissions if necessary, if such shorter term is found more appropriate.

Student Population: 19,749

City Type: Urban

Public Hearing Date: 9/14/2021

Public Hearing Advertised: Notice of the public hearing was published in the San Diego Union Tribune.

Local Board Approval Date: 9/14/2021

Community Council Reviewed By: Surplus Property Advisory Committee (7-11) (*Education Code* Section 17388)

Community Council Reviewed Date: 8/26/2021

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Sarah Polito

Position: Attorney

E-mail: [spolito@f3law.com](mailto:spolito@f3law.com)

Telephone: 760-422-9916

Bargaining Unit Date: 9/13/2021

Name: California School Employees Association (CSEA)

Representative: Herlinda Ahmad

Title: President

Phone: 800-675-9939

Position: Neutral

Bargaining Unit Date: 9/13/2021

Name: Oceanside (California) Teachers Association (CTA)

Representative: Tiffany Cooper-Ortega

Title: President

Phone: 760-721-1810

Position: Support