

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2022 AgendaItem #W-17

## Subject

Request by **Twin Rivers Unified School District** to waive California *Education Code (EC)* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Number

Twin Rivers Unified School District 6-4-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Twin Rivers Unified School District (Twin Rivers 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 two pieces of property through the RFP process.

## 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 any proposals received be examined and declared by the district’s governing board in a public meeting to allow for public comment prior to making a selection, and 2) that the district's governing board determine and select the most desirable transaction 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 district is requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

### Twin Rivers USD

Twin Rivers USD was created through the unification of several school districts. Through this unification, the district acquired all of the property previously owned by the prior districts. The properties at issue in this waiver request were both previously owned by the Grant Joint Union High School District. While Twin Rivers USD took ownership of the properties in 2007 by function of law, the district formally recorded the change of ownership via a deed to itself in 2013, memorialized in Board Resolution No. 362.

Twin Rivers USD requests that the specified *EC* sections be waived in order to allow the district to sell two connected pieces of real property, collectively known as “the Village 13 property” (Village 13):

1. Assessor Parcel Number 201-0320-018, in the Panhandle Development Area, with a street address of 5921 East Levee Road; and
2. The adjacent parcel, Number 201-0320-019, no street address.

Currently, Village 13 is not being used by Twin Rivers USD, there are no community groups authorized to use Village 13, and the district does not need use of these parcels as they have been declared surplus by the 7-11 Committee and affirmed so by the governing board. Twin Rivers USD wishes to sell Village 13 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.

### Demographic Information

The Twin Rivers USD was formed through the unification of several other Sacramento County school districts in 2007. Because of the nature of the districts being unified, Twin Rivers USD contains both suburban and rural areas, and serves the communities of Foothill Farms, North Highlands, and Rio Linda. It has a student population of 24,497.

**Because this is a general waiver, if the State Board of Education (SBE) decides to deny the waiver, 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 district is 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 district to maximize revenue from the saleor lease of the properties.

The district has certified that both 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 (1 pages)
* **Attachment 2:** Twin Rivers Unified School District General Waiver Request 6-4-2022 (7 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** |
| 6-4-2022 | Twin Rivers Unified School District | Assessor Parcel Number 201-0320-018 located at 5921 East Levee Road, Sacramento, CA 95835Assessor Parcel Number 201-0320-019 (adjacent) | **Requested:**July 13, 2022 to July 12, 2024**Recommended:**July 13, 2022 to July 11, 2024 | 3/22/2022 | 3/22/2022Public Hearing Advertised: A notice that included the time, date, location, and subject of the hearing was published in the Sacramento Bee and on the district’s website. | California School Employees AssociationVicky Gunter, President4/12/2022**Support**Twin Rivers School Police AssociationCory Yen, President4/7/2022**Neutral**Twin Rivers United EducatorsRebecca LeDoux, President2/24/2022**Neutral** | District Facilities Advisory Committee2/17/2021**No Objections** |

Created by the California Department of Education

May 2022

# Attachment 2: Twin Rivers Unified School District General Waiver Request 6-4-2022

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3476505

Waiver Number: 6-4-2022

Active Year: 2022

Date In: 4/18/2022 6:50:50 PM

Local Education Agency: Twin Rivers Unified

Address: 5115 Dudley Blvd.

McClellan, CA 92024

Start: 7/13/2022

End: 7/12/2024

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

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 Twin Rivers 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 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 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 or lease 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 Twin Rivers Unified School District (“District”) owns the parcels of real property located in the Panhandle Development Area, identified by Assessor Parcel Numbers 201-0320-018 and 201-0320-019, which is commonly known as the Village 13 Property referred to herein as (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 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. This flexibility is particularly important for this Property given the unique status of the Panhandle Development Area in which the Property is located – specifically, the Panhandle Development Area is undergoing rapid development, is impacted by several environmental issues, and the specific Property is subject to various easement requests from local utilities, some of which have indicated that they will exercise their eminent domain powers if the District does not grant the requested easement. In light of all of this, the District believes that a sophisticated buyer may need to purchase this Property and wishes to have the flexibility obtained through a waiver in order to solicit and negotiate with such an entity. 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 to develop a process to sell the Property in a fair and open manner. The District is requesting a waiver for the term of 2 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.

NOTE: The District has additional documentation related to this request that it would like to include with this application, but the system seems to crash once we reach a certain number of attachments. We have attached what we believe are the most relevant supporting documents, but we are happy to share more over email if desired. Please note that we were only able to upload a portion of the 7-11 Committee report that addresses this property. Additional information regarding the 7-11 process is available here: https://www.twinriversusd.org/Departments/Administrative-Services/7-11-Committee/index.html. The subject property is referred to as the Village 13 property in the 7-11 Committee materials.

Student Population: 23999

City Type: Urban

Public Hearing Date: 3/22/2022

Public Hearing Advertised: A notice that included the time, date, location, and subject of the hearing was published in a newspaper of general circulation.

Local Board Approval Date: 3/22/2022

Community Council Reviewed By: Facilities Advisory Committee (7-11 Committee)

Community Council Reviewed Date: 2/17/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Sydne Rennie

Position: Attorney, District Counsel

E-mail: srennie@f3law.com

Telephone: 619-874-2624

Fax:

Bargaining Unit Date: 04/12/2022

Name: California School Employees Association

Representative: Vicky Gunter

Title: CSEA Chapter 1717 President

Phone: 916-566-1600

Position: Support

Comments:

Bargaining Unit Date: 04/07/2022

Name: Twin Rivers School Police Association

Representative: Cory Yen

Title: President

Phone: 844-280-1188

Position: Neutral

Comments:

Bargaining Unit Date: 02/24/2022

Name: Twin Rivers United Educators

Representative: Rebecca LeDoux

Title: President

Phone: 916-648-9791

Position: Neutral

Comments: