

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education November 2022 AgendaItem #W-03

## Subject

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

## Waiver Numbers

* Charter Oak Unified School District 7-6-2022
* Fremont Unified School District 4-7-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Charter Oak Unified School District (USD) is requesting to waive all of California *Education Code (EC)* sections 17469, 17472, 17473, 17474, 17486, 17489, 17492, 17493, 17494, 17495, and 17498, and portions of sections 17455, 17464, 17466, 17468, 17470, and 17475, which will allow the district to sell a piece of property, in a manner that best serves its schools and community, through the Request for Proposal (RFP) process. Charter Oak USD is also requesting to waive portions of sections 17488 and 17491, known as the Naylor Act, which requires them to offer to sell a portion of the property to other local agencies at a reduced rate.

The Fremont USD is requesting to waive all of California *EC* sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, 17472, 17475, and 17476 which will allow the district to sell a piece of property, in a manner that best serves its schools and community, 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: that the proposal each district’s respective governing board determines to be the most desirable shall be selected within 30 to 60 days of the public meeting where the proposal was received, 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.

### Charter Oak USD

Charter Oak USD requests that the specified *EC* sections be waived in order to allow the district to sell a portion of a piece of real property. The property in question is located at 1503 South Sunflower Avenue, in Glendora. The site houses the district’s alternative education programs, including Arrow Continuation High School, Bridges Community Day School, Oak Knoll Virtual Academy, and Oak Knoll Independent Study. These programs are housed on the southern two-thirds of the property. The northern third of the property consists of an open, grassy area that is not used by students for recreation or after-school activities (see attachment 4). In fact, the district expends staff time to ensure that the area is not used by students as a safety measure—the area is difficult to supervise, due in part to the location of San Dimas Wash along the northwestern site boundary. The district’s 7-11 Facilities Advisory Committee determined that the sale of this portion of the property, consisting of approximately 5 acres, would not affect any district programs. The district is also experiencing declining enrollment, and does not foresee a future expansion of the programs offered at this site. The district’s governing board declared the property surplus to allow district staff to pursue a lease of the property through the RFP process.

In addition, the district is requesting to waive portions of the Naylor Act. The Naylor Act requires school districts that propose to sell land used for outdoor recreation to offer to lease or sell a portion of the land to specified local jurisdictions. An agency having jurisdiction could acquire up to 30 percent of the surplus property for 25 percent of the fair market value. The Naylor Act is intended to ensure the continuity of outdoor student recreational activities when a school property is sold. The district is unaware of any student recreational activities that would be negatively affected if the northern portion of the property were to be sold.

### Fremont USD

Fremont USD requests that the specified *EC* sections be waived in order to allow the district to sell one piece of real property. The former Marshall Elementary School is a 2.62-acre property located at 5301 Curtis Street in Fremont. The school was closed in 2000, and the site was leased for other uses from 2004 to 2018. It has been vacant since 2018. At that time, the district began exploring use of the site as a consolidated Spanish Dual Immersion/Mandarin Immersion Program (SDI/MIP). In preparation for this possibility, the site was surveyed, and a high-pressure Pacific Gas & Electric natural gas transmission pipeline was discovered. This discovery renders the site inappropriate not just for the planned SDI/MIP program, but for any educational purposes, pursuant to *EC* Section 17213. Based upon this discovery, the district declared the property surplus on April 21, 2021, as recommended by its 7-11 Facilities Advisory Committee.

### Demographic Information

Charter Oak USD is a suburban school district with a student population of 4,260 and is located in the eastern portion of Covina, southern portion of Glendora, and western portion of San Dimas, in Los Angeles County.

Fremont USD is an urban school district with a student population of 33,873 and is located in the city of Fremont, in Alameda 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. Staff were unable to locate a previous waiver involving the Naylor Act.

## 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 (1 page)
* **Attachment 2:** Charter Oak Unified School District General Waiver Request 7-6-2022 (3 pages). (Original waiver request is signed and on-file in the Waiver Office.)
* **Attachment 3:** Fremont Unified School District General Waiver Request 4-7-2022 (6 pages). (Original waiver request is signed and on-file in the Waiver Office.)
* **Attachment 4:** Charter Oak Unified School District Property Map (1 page)

# 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-6-2022 | Charter Oak Unified School District | 1503 South Sunflower Avenue, Glendora, CA 91740 | **Requested:**June 21, 2022 toJune 21, 2025**Recommended:**June 21, 2022 toJune 19, 2024 | 5/19/2022 | 5/19/2022Public Hearing Advertised: District website | California School Employees Association, Maria Montell, Chapter 309 President 6/17/2022**Neutral** | District Asset Management Advisory Committee4/21/2022**No Objections** |
| 4-7-2022 | Fremont Unified School District | 5301 Curtis Street, Fremont, CA 94538  | **Requested:**September 28, 2022 toSeptember 30, 2024**Recommended:** September 28, 2022 toSeptember 26, 2024 | 6/15/2022 | 4/13/2022Public Hearing Advertised: District website | California School Employees Association, Tammie Solis, President 4/4/2022**Neutral**Fremont Unified Teacher Association, Brannin Dorsey, President4/4/2022 **Neutral**Service Employees International Union, Matthew Doeschot & Jeremy SchneiderPresidents4/4/2022**Neutral** | District Facilies Advisory Committee4/6/2022**No Objections** |

Created by the California Department of Education

September 2022

# Attachment 2: **Charter Oak Unified School District General** **Waiver Request 8-3-2022**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1964378

Waiver Number: 7-6-2022

Active Year: 2022

Date In: 6/21/2022 11:08:25 AM

Local Education Agency: Charter Oak Unified

Address: 20240 East Cienega Ave.

Covina, CA 91724

Start: 6/21/2022

End: 6/21/2025

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, 17464, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475, 17486, 17488, 1789, 17491, 17492, 17493, 17494, 17495, 17498

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: See Attachment A

Outcome Rationale: The Charter Oak Unified School District (“District”) owns 1503 Sunflower Avenue, Glendora, California 91740 (“School Site”). The District has been experiencing a steady decline in student enrollment for the past ten years, as a result, the District’s budget has been in flux. The District has been working towards budget stabilization since 2019, including considering options which would bolster District revenue and offset areas of ongoing concern.

After receiving the Asset Management Committee’ recommendation report to surplus the Property, the Board deemed the Property surplus on May 19, 2022. The District seeks to forgo the public offering and public bidding processes and and list the Property on the open market with the assistance of a real estate agent or broker, develop and issue Requests for Qualifications and Requests for Proposals, and directly negotiate with proposers for best and final offers. This would allow the District to maximize its return on the sale of the Property to the greatest extent possible while being able to consider criteria such as community use and public benefit in its selection process. Revenue from the disposition of the Property would be of benefit to the District and will help enhance its facilities. Moreover, the ongoing maintenance expenditures relating to the Property would be eliminated, and the future development of the Property would benefit the community.

See Attachment B for additional information.

Student Population: 4260

City Type: Urban

Public Hearing Date: 5/19/2022

Public Hearing Advertised: Publication on the District website, which included the time, date, location, and subject of the hearing.

Local Board Approval Date: 5/19/2022

Community Council Reviewed By: District Asset Management Advisory Committee

Community Council Reviewed Date: 5/19/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Karyl Brandford

Position: Chief Business Officer

E-mail: kbrandford@cousd.net

Telephone: 626-966-8331 x90526

Fax:

Bargaining Unit Date: 06/17/2022

Name: California School Employees Association, Chapter 3

Representative: Maria Montell

Title: President

Phone: (626) 622-9544

Position: Neutral

Comments:

# Attachment 3: **Fremont Unified School District General** **Waiver Request 4-7-2022**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0161176

Waiver Number: 4-7-2022

Active Year: 2022

Date In: 7/15/2022 2:47:21 PM

Local Education Agency: Fremont Unified

Address: 4210 Technology Dr.

Fremont, CA 94538

Start: 9/28/2022

End: 9/30/2024

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, 17473, 17474, 17475, and 17476

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *Education Code* § 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 bracketed language is to be waived since the District is asking that several provisions of the article be waived and consequently, the sale will not be made in the manner provided in Article 4.

*Education Code* § 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: District requests the bracketed language be waived so that District will not be required to receive sealed proposals or oral bids at a public meeting, allowing the District to directly negotiate with interested purchasers of the Property. Since the District cannot predict in advance the timing of negotiations, it cannot at the time of adopting the resolution know when proposals must be brought back to the Board for consideration. District intends to utilize the services of a broker to advertise and solicit proposals for the purchase of the property, and bring proposals to the Board when necessary to consider the proposed transaction. District requests that the resolution not specify the minimum price or rental in order to maximize its bargaining power through the RFP process. Additionally, the RFP will outline the minimum terms and conditions and the flexibility of that process will allow the public to broadly propose terms and conditions for the Board’s consideration.

*Education Code* § 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 bracketed language is to be waived because the District is requesting that the requirement of opening sealed bids and receive oral bids concurrently during a Board meeting be waived, allowing the District to negotiate directly with interested purchasers through the RFP process.

*Education Code* § 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 bracketed language to be waived assumes the Board would be holding a meeting to open sealed bids and receive oral bids for purchase of the Property. Such a requirement is requested to be removed pursuant to the language requested to be stricken in *Education Code* section 17466.

*Education Code* § 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 the Board would be setting a specific meeting to open sealed bids and receive oral bids. However, such requirements are requested be removed pursuant to the language stricken within *Education Code* section 17466. The Board thus does not intend the sale be made pursuant to Article 4.

*Education Code* § 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 bracketed language is to be waived because the District is requesting that the requirement of opening sealed bids and receiving oral bids during a certain meeting be waived, allowing the District to directly negotiate with interested purchasers of the Property through the RFP process. The terms and conditions will not be specified in the Board’s resolution of intention to sell or to lease the property, as that requirement is requested to be stricken from *Education Code* section 17466.

*Education Code* § 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 bracketed section is to be waived because the District will not be accepting oral bids, but desires to directly negotiate with a potential purchaser of the Property.

*Education Code* § 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: This entire bracketed section is to be waived because the District will not be accepting oral bids for the purchase of the Property.

*Education Code* § 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 bracketed language to be waived would remove the requirement for the Board to accept a proposal at the same meeting it is examined, or at a subsequent adjourned session within 10 days. Instead, this modification would allow the Board to consider proposals received and direct further negotiation. The statute, as modified, still requires acceptance of the contract to purchase the Property at a Board meeting.

*Education Code* § 17476: The governing body may [at the session], if it deems such action to be for the best public interest, [reject any and all bids, either written or oral, and] withdraw the property from sale or lease. RATIONALE: The bracketed language is to be waived because the District will not be accepting oral bids for the purchase of the Property. In addition, the District requests reference to "the session” be removed, as it refers to the meeting when the Board will receive sealed and oral bids which the District is requesting be waived in *Education Code* sections 17472 and 17473.

Outcome Rationale: On April 21, 2021, the District Board declared 5301 Curtis Drive, in Fremont (“Property”) as surplus. On March 23, 2022, the Board authorized staff to proceed with the necessary steps for the disposition of the Property, including sending the statutorily required priority notices to public entities. On March 28, 2022, the District issued its notices of the potential sale or lease to the priority entities as required by *Education Code* section 17464.

Pursuant to *Education Code* section 33050 et seq., the District is requesting that specific portions of the *Education Code* relating to the sale of surplus property be waived, specifically, the requirement for opening sealed proposals and conducting the oral bidding process concurrently to sell only to the highest bidder. This will allow the District, through the RFP process, to consider all proposed options from the public, directly negotiate with potential buyers in an effort to maximize the proceeds from the sale, while also ensuring that the terms will serve the District’s best interests. The process will better facilitate the District’s operations by not accruing costs or taking away District resources to conduct the sealed and oral bidding process, while maximizing the return of the sale or lease through the RFP process.

Student Population: 33471

City Type: Urban

Public Hearing Date: 4/13/2022

Public Hearing Advertised: Notice was posted on the District website (including time, date, location, subject of hearing). It was also noticed and agendized as part of the Board's regular meeting according to the Brown Act.

Local Board Approval Date: 6/15/2022

Community Council Reviewed By: Facilities Advisory Committee

Community Council Reviewed Date: 4/6/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Karina K. Samaniego

Position: Attorney for the District - Dannis Woliver Kelley

E-mail: ksamaniego@DWKesq.com

Telephone: 619-595-0202

Fax: 510-659-2597

Bargaining Unit Date: 04/04/2022

Name: California School Employee Association (“CSEA”)

Representative: Tammie Solis

Title: CSEA President

Phone: tsolis@fusdk12.net

Position: Neutral

Comments:

Bargaining Unit Date: 04/04/2022

Name: Fremont Unified District Teacher Association

Representative: Brannin Dorsey

Title: FUDTA President

Phone: Fudtapres@gmail.com

Position: Neutral

Comments:

Bargaining Unit Date: 04/04/2022

Name: Service Employee International Union (“SEIU”)

Representative: Matthew & Jeremy Doeschot & Schneider

Title: SEIU Presidents

Phone: mdoeschot@fusdk12.net; jeremyschneider@fusdk12.net

Position: Neutral

Comments:

# Attachment 4: Charter Oak Unified School District Property Map



The northern third of the site located at 1503 South Sunflower Avenue is outlined in yellow to illustrate the area proposed for sale.