

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2023 Agenda Item #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

* Berryessa Union Elementary School District 7-9-2022
* Rim of the World Unified School District 1-9-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Berryessa Union Elementary School District (ESD) is requesting to waive all of California *Education Code (EC)* sections 17472, 17473, 17474, and portions of sections 17455, 17466, 17469, 17475, which will allow the district to lease a piece of property in a manner that best serves its schools and community, through the Request for Proposal (RFP) process.

The Rim of the World Unified School District (USD) is requesting to waive all of California *EC* sections 17473 and 17474, and portions of sections 17455, 17466, 17469, 17472, 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 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.

### Berryessa Union Elementary School District

Berryessa Union ESD requests that the specified EC sections be waived in order to allow the district to maximize the return on the lease of a piece of real property located at 1376 Piedmont Road, San Jose, California, through an RFP rather than a public bid process. The Piedmont Road property has never been used to educate students. Rather, it was previously used to house district administrative functions. However, it had limited meeting space, and the district found it to be an inefficient floorplan for this purpose. The district has since purchased a new administrative site and moved staff to this new facility.

Because it was not laid out as a school site, the Piedmont Road site is not designed with appropriate facilities for educational purposes and would require extensive redesign before it could be used for this purpose. The district has determined that using this site for additional educational space is unnecessary at this time, and would therefore like to maximize its utility as a source of revenue for the benefit of district students while reserving it for potential future use. Permitting the district to utilize the RFP process for leasing the facility would allow greater flexibility to find an arrangement that provides the most benefit possible to the district.

### Rim of the World USD

Rim of the World USD requests that the specified EC sections be waived in order to allow the district to maximize the return on the sale or lease of a piece of real property located at North Seeley Drive at Nob Place in Crestline through an RFP rather than a public bid process. The Crestline property is vacant land and has never been used for any district purposes. The district is experiencing long-term enrollment declines, dropping by over half since the 1996-97 school year, when enrollment was 6,078, to its current student population of 2,926. Therefore, the district has determined that this site is not needed for educational purposes.

The State Board of Education (SBE) previously authorized a waiver in January of 2021 allowing the district to employ the RFP process. At the time, the district was authorized a waiver for two properties, one of which was the North Seeley Drive location. While the district was able to sell the other property affected by the 2021 waiver, due to a need to focus administrative resources on other issues created by the pandemic, the district is requesting that the SBE renew that waiver so that they can continue entertaining competitive bids on the North Seely Drive property.

### Demographic Information

Berryessa Union Elementary School District is an urban school district in the city of San Jose, within Santa Clara County. It has a population of 6,534 students.

Rim of the World USD is a suburban district located in an unincorporated portion of San Bernardino County. It has a population of 2,926 students.

**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 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 (2 pages)
* **Attachment 2:** Berryessa Union School District General Waiver Request 7-9-2022 (4 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Rim of the World Unified School District General Waiver Request 1-9-2022 (2 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-9-2022 | Berryessa Union Elementary School District | 1376 Piedmont Road, San Jose, CA 95132 | **Requested:** September 23, 2022 to September 22, 2024  **Recommended:**  September 23, 2022 to September 22, 2024 | 9/13/2022 | 9/13/2022  Public Hearing Advertised: District website | California School Employee Association Chapter 364  Sheko Habibi  Chapter President  09/02/2022  **Neutral**  California Teachers Association of Berryessa  Joe Hermann  President  08/26/2022  **Support**  Teamsters Local Union 150  Johnny Salgado  Chief Shop Steward  08/26/2022  **Support** | District English Learner Advisory Committee 9/1/2022 **No Objections** |
| 1-9-2022 | Rim of the World Unified School District | North Seeley Drive at Nob Place in Crestline, CA 92325, known generally as Crestline Elementary. | **Requested:** September 28, 2022 to September 30, 2024  **Recommended:**  September 28, 2022 to September 26, 2024 | 8/18/2022 | 8/18/2022  Public Hearing Advertised: two local newspapers, district website | California School Employees Association  Suzanne Grow  President  08/11/2022  **Support**    Rim Teachers Association  Ngozi Ogbeni-Lether  President  **Support** | District Facilities Advisory Committee 8/11/2022 **No Objections** |

Created by the California Department of Education

January 2023

# Attachment 2: Berryessa Union Elementary School District General Waiver Request 7-9-2022

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4369377

Waiver Number: 7-9-2022

Active Year: 2022

Date In: 9/23/2022 3:05:55 PM

Local Education Agency: Berryessa Union Elementary

Address: 1376 Piedmont Rd.

San Jose, CA 95132

Start: 9/23/2022

End: 9/22/2024

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Lease of Surplus Property

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

Ed Code Authority: Section 33050

*Education Code* or *CCR* to Waive: 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].

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].

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].

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].

[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. ]

[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.]

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].

Outcome Rationale: The Berryessa Union School District desires to have the requested *Education Code* sections, or portions thereof, waived because the waiver of these sections will allow the District to maximize its return on the lease of the District’s existing administrative office space located at 1376 Piedmont Road, San Jose, CA 95132, following the District’s purchase of a new District office building. The District has determined the administrative office space has not been used as a school and is not needed for school purposes. It is the desire of the District to attract potential lessors who will not only pay maximum price for the property, but who will also enhance the surrounding neighborhood. Based on past leases of real property in the area and the location of the property, the District anticipates attracting a much greater interest from potential purchasers through a Request for Proposal process than a bid process.

Student Population: 6017

City Type: Small

Public Hearing Date: 9/13/2022

Public Hearing Advertised: Publish a notice on the LEA’s website that includes the time, date, location, and subject of the hearing

Local Board Approval Date: 9/13/2022

Community Council Reviewed By: District English Learner Advisory Committee

Community Council Reviewed Date: 9/1/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Kevin Franklin

Position: Assistant Superintendent of Business Services

E-mail: [kfranklin@busd.net](mailto:kfranklin@busd.net)

Telephone: 408-923-1861

Fax: 408-254-1802

Bargaining Unit Date: 08/26/2022

Name: California School Employee Association Chapter 364

Representative: Sheko Habibi

Title: Chapter President

Phone: [shabibi@busd.net](mailto:shabibi@busd.net)

Position: Neutral

Comments:

Bargaining Unit Date: 09/02/2022

Name: California Teachers Association of Berryessa

Representative: Joe Hermann

Title: President

Phone: [j.hermann1934@gmail.com](mailto:j.hermann1934@gmail.com)

Position: Support

Comments:

Bargaining Unit Date: 08/26/2022

Name: Teamsters Local Union 150

Representative: Johnny Salgado

Title: Chief Shop Steward

Phone: [jsalgado@busd.net](mailto:jsalgado@busd.net)

Position: Support

Comments:

# Attachment 3: Rim of the World Unified School District General Waiver Request 1-9-2022

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3667868

Waiver Number: 1-9-2022

Active Year: 2022

Date In: 9/1/2022 12:30:07 PM

Local Education Agency: Rim of the World Unified

Address: 27315 North Bay Rd.

Blue Jay, CA 92317

Start: 9/11/2022

End: 9/11/2025

Waiver Renewal: Y

Previous Waiver Number: 7-9-2020-W-03

Previous SBE Approval Date: 1/14/2021

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: [17455] [17466] [17469] [17472] [17473] [17474] [17475]

Ed Code Authority: [33050-33053]

*Education Code* or *CCR* to Waive: Topic of the waiver: Public Bid Auction Requirements

Outcome Rationale: See attachment

Student Population: 2924

City Type: Rural

Public Hearing Date: 8/18/2022

Public Hearing Advertised: Notice in a newspaper on August 20, 27, and September 3,2020 in the Mountain News and The Alpine Mountaineer. On August 18, 2022 the board approved a resolution to apply for a renewal of the waiver.

Local Board Approval Date: 8/18/2022

Community Council Reviewed By: District Advisory Committee

Community Council Reviewed Date: 8/11/2022

Community Council Objection: N

Community Council Objection Explanation:   
  
Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Jenny Haberlin

Position: Chief Business Official

E-mail: [jenny\_haberlin@rimsd.k12.ca.us](mailto:jenny_haberlin@rimsd.k12.ca.us)

Telephone: 909-336-4140

Fax:

Bargaining Unit Date: 08/11/2022

Name: California School Employees Association

Representative: Suzanne Grow

Title: President

Phone: 909-589-0396 ext 100

Position: Support

Comments:

Bargaining Unit Date: 08/11/2022

Name: Rim Teachers Association

Representative: Ngozi Ogbeni-Lether

Title: President

Phone: 909-589-0396 ext 110

Position: Support

Comments: