

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2023 AgendaItem #W-04

## Subject

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

## Waiver Number

9-9-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Torrance Unified School District (Torrance USD) is requesting to renew its prior waiver of all of California *Education Code* (*EC*) sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17470, 17472, and 17475. Those provisions provide for a sealed bid hearing process, which requires a district to specify terms and conditions for the sale or lease of surplus property, and then sell or lease to the highest bidder. This waiver does not grant the District permission to dispose of the site, which the district has authority to do without SBE approval through the statutorily required sealed bid process. Granting the waiver authorizes the district to utilize a more flexible Request for Proposal (RFP) process which allows the consideration of factors beyond the highest bid. By its request, Torrance USD seeks the ability to negotiate beneficial terms for a lease with interested parties 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:

(1) that the proposal a district’s 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 of a board meeting held on 10 days’ public notice, and included in the minutes of the meeting;

(2) that prior to entering into negotiations, the governing board shall hold a public hearing where members of the public, including labor organizations, can discuss possible uses of the surplus property and share concerns regarding any impact on the community, including the potential relocation of the programs currently operating at the property;

(3) the 10-day public notice referenced in condition (1) shall be posted prominently on the Torrance USD’s main web page in English, Spanish, Japanese, and Korean, as well as posted physically at all entrances commonly used by the public at the Hamilton Adult Center, and shall be provided to any person or group, including but not limited to labor organizations, student organizations and community associations that utilize the site, who has requested that notice (or district board meeting notices generally); and

(4) given the governing board’s authorization to pursue a waiver for the lease of the property, the waiver shall be granted for the lease of the property only. If the district decides to pursue the sale of the property, another waiver request would be needed.

## Summary of Key Issues

This is a renewal of a November 2020 waiver which authorized Torrance USD to use the RFP process to lease, but not sell, one piece of real property, known as the Hamilton Adult Center. Due to concerns which are laid out more fully in the following paragraphs, the initial waiver was granted with conditions requiring an additional public meeting to be held with stakeholders for the purpose of discussing uses of the site, requiring that the winning proposal be selected within 30 to 60 days of receipt, and that the reasons for that determination be discussed in public session, and limiting this waiver to a lease only. The term of the waiver was two years, during which time, due to exigencies related to the COVID-19 pandemic, the district was unable to pursue a lease of the site.

Torrance USD’s request relates to approximately 10.05 acres of real property, the Hamilton Adult Center, located at 2606 W. 182nd Street, Torrance, CA 90504. The district’s governing board declared the property surplus at its August 6, 2018 meeting, although it is currently using the property to house adult education programs and a Special Education Transition program. The district has stated that should a move be necessary, it will be able to move the programs currently located on the property to other district properties within the North Torrance area.

By its request, Torrance USD seeks the ability to negotiate terms for a lease of the property with interested parties, following an RFP process, instead of having to adhere to the formal sealed bid hearing process outlined in the *EC*.

The district’s Surplus Property Advisory Committee held six public meetings—starting in October 2017 and concluding in April 2018—to discuss possible uses and disposition of the property, culminating in a final report dated July 31, 2018. That committee dispersed after submitting its report to the governing board and has not met since. When the district decided to apply for renewal of Waiver 1-11-2020, committee members were contacted and asked if they believed it was necessary to meet and discuss the renewal. No concerns were raised and a majority of the committee indicated no desire to reconvene.

In the course of the initial waiver application, submitted on August 7, 2019, concerns were raised about the degree of community engagement and about the local little league and softball programs. While these programs are not district sports programs, they utilize facilities at the Hamilton Adult Center site.

The District re-engaged in discussions and, as a result of this re-engagement, the District committed to relocating the programs, including the little league and softball activities, to other district-owned sites in the North Torrance area, should they come to an agreement to lease the site. Additionally, the State Board of Education’s (SBE) approved waiver placed specific conditions requiring additional public meetings. It should be noted that, in the two years subsequent to the waiver approval, the district has not relocated the programs in question or provided alternative sports facilities. Representatives of two unions contacted by CDE staff made it clear that their neutral positions on the new waiver were contingent upon the same conditions remaining in effect. Because of this, and the fact that none of the factors that initially led to the imposition of these conditions have materially changed, CDE staff are recommending the inclusion of the same conditions.

Subsequent to the receipt of this new waiver application, CDE received correspondence from the two local bargaining groups representing the California School Employees Association (CSEA). The bargaining units have requested additional conditions, namely that the public be provided notice of the required hearing 30 days prior via posting on the Torrance USD website’s main page, and that direct written notice be provided to all stakeholders. They have further requested written notice to all stakeholders including a plain-language summary of the accepted proposal, information on how to view the full agreement, and that these required notices be posted in the top three languages used by the community in addition to English. With these additional conditions, these bargaining groups stated that their position on the waiver will become neutral.

CDE staff contacted the District regarding the correspondence from CSEA. The District believes that they have met all necessary notification and publication conditions required by law. They have pointed to past instances in which they provided notification to their bargaining partners, but received minimal or conflicting responses. No public comment in opposition was received at the September 19, 2022 school board hearing authorizing the renewal of this waiver.

It is clear that the strained communications experienced between the District and its stakeholders during the 2020 waiver application process continue to exist. The additional public meetings required by the 2020 waiver conditions were intended to foster additional discussion and open dialogue between all parties before any final disposition of the property. However, due to the lapse in time since the initial waiver approval, this issue is no longer at the forefront of community awareness, and the opportunity for public dialogue would benefit from added opportunity for public notice. This is especially true given the vulnerable nature of the student groups served by the site (English language learners, adult learners, and low-income students). Therefore, CDE staff are recommending additional notification requirements intended to enhance the existing public meetings required by the initial waiver conditions. These notification requirements include a 10-day public notice period; translation into Spanish, Japanese, and Korean; posting the notice online and at the Hamilton Adult Center; and a requirement that the notice be sent to any individual or stakeholder group that requests it, or board meeting notices more generally. These publication requirements have been incorporated into the recommended conditions above. CDE recommends approval of the waiver request with all conditions referenced above.

### Demographic Information

Torrance USD is an urban school district which has a student population of 22,490 and is located in the South Bay region of Los Angeles County.

**Because this is a general waiver, if the 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 lease of surplus property. The district has a previously approved waiver from the November 2020 SBE meeting (Waiver 1-11-2020, Item W-07, <https://www.cde.ca.gov/be/ag/ag/yr20/documents/nov20w07.docx>), which expires on November 3, 2022.

## Fiscal Analysis

The district has certified that the site has 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.

There is no statewide fiscal impact of this waiver approval.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Torrance Unified School District General Waiver Request 9-9-2022 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-9-2022 | Torrance Unified School District | 2606 W. 182nd Street, Torrance, California 90504 | **Requested:**November 6, 2022 toNovember 6, 2024**Recommended:**November 6, 2022 toNovember 4, 2024 | 9/19/2022 | 9/19/2022Public Hearing Advertised: District website, posted at district office | California School Employees Assn 19Robert DewitzLabor Relations Representative9/12/2022**Oppose**California School Employees Assn 845Kathy Kelley, President9/12/2022**Oppose**Service Employees International Union Local 99Manny RangelInternal Organizing Director9/12/2022**Neutral with conditions**Torrance Teachers AssociationDeborah Tabush, President9/12/2022**Neutral with conditions** | District Surplus Property Advisory Committee9/13/2022**No Objections** |

Created by the California Department of Education

January 2023

# Attachment 2: **Torrance Unified School District General** **Waiver Request 9-9-2022**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1965060

Waiver Number: 9-9-2022

Active Year: 2022

Date In: 9/30/2022 3:41:43 PM

Local Education Agency: Torrance Unified

Address: 2335 Plaza Del Amo

Torrance, CA 90740

Start: 11/6/2022

End: 11/6/2024

Waiver Renewal: Y

Previous Waiver Number: 1-11-2020-W-07

Previous SBE Approval Date: 12/23/2020

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: Torrance 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 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 either a lease agreement that provides the most benefit to the District.

*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 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 deleted language indicates the District will receive sealed proposals and oral bids for 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 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 deleted language indicates the Board would be setting a specific meeting to receive proposals for 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 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 S*EC*TION [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 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 S*EC*TION [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 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 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: Torrance Unified School District (“District”) owns approximately 10.05 acres of real property located at 2606 W. 182nd Street, Torrance, California 90504, commonly known as the Hamilton Adult Center (“Property”). The District’s governing Board declared the Property surplus because it no longer uses or needs the Property. The District also previously sought and received a waiver from the State Department of Education (SBE) but decided to refrain from seeking a lease until now for a variety of reasons, as set forth in the declaration from the District, included with this application (the “District Declaration”). Also attached are the Supporting Documents and Reference Documents that the District previously provided with its initial waiver application. The District’s Board of Education adopted a new resolution confirming its decision to declare the Property surplus and pursue a lease, which is attached and included in the District Declaration. This resolution is also included with the District Declaration. Thus, the District seeks an extension of the original waiver pursuant to the same terms and conditions established by SBE when it granted the original waiver. The District’s rationale and basis for this waiver extension is further discussed in the District Declaration and its accompanying exhibits.

As explained in the District’s original waiver, *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. This RFP process will allow the District to receive offers to lease the Property and then determine which proposer offers the best terms and conditions for the District. The bid auction scenario 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 from the surplus property requirements will allow the District to do this. 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 leased through a fair and open process.

Student Population: 23638

City Type: Urban

Public Hearing Date: 9/6/2022

Public Hearing Advertised: The attached resolution was posted at the District Office and on the District's website, and announced by the District as part of the District Board's agenda as required by the Brown Act.

Local Board Approval Date: 9/6/2022

Community Council Reviewed By: District formed a Surplus Property “7-11” Advisory Committee pursuant to *Education Code* 17388 eq seq

Community Council Reviewed Date: 9/13/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Stephen McLoughlin

Position: attorney

E-mail: stmcloughlin88@hotmail.com

Telephone: 562-519-7573

Fax:

Bargaining Unit Date: 09/12/2022

Name: California School Employees Association 19

Representative: Robert Dewitz

Title: Labor Relations Representative

Phone: 310-972-6045

Position: Neutral

Comments:

Bargaining Unit Date: 09/12/2022

Name: California School Employees Association 845

Representative: Kathy Kelley

Title: President

Phone: 626-258-3334

Position: Neutral

Comments:

Bargaining Unit Date: 09/12/2022

Name: Service Employees International Union Local 99

Representative: Manny Rangel

Title: Internal Organizing Director

Phone: 213-387-8393

Position: Neutral

Comments:

Bargaining Unit Date: 09/12/2022

Name: Torrance Teachers Association

Representative: Deborah Tabush

Title: President

Phone: 310-320-8200

Position: Neutral

Comments: