

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2021 AgendaItem #W-08

## Subject

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

## Waiver Number

19-2-2021

## Type of Action

Action, Consent

## Summary of the Issues

The Oceanside Unified School District (Oceanside USD) is requesting to waive all of California *Education Code (EC)* sections 17472, 17473, and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, and 17475, which will allow the district to maximize the return on the sale of one piece of property in a manner that best serves its 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: that the proposal the 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 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 of surplus property be waived.

Oceanside USD requests that the specified *EC* sections be waived in order to allow the district to maximize its return on the sale of one piece of real property located at 4991 Macario Drive, formerly the Pacifica Elementary School site, in a manner that best serves its schools and community. The property is currently vacant land, as all structures have been demolished, and is not being used by the district. It has been declared surplus and there are no authorized uses permitted at this time. The district has developed a strategic plan for advertising and marketing the property, and is working with legal counsel to seek proposals and develop a process to sell the property in a fair and open manner.

### Demographic Information

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

**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 of surplus property.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the district to maximize revenue from the sale of the property.

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.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Oceanside Unified School District General Waiver Request
19-2-2021 (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** | **Property** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 19-2-2021 | Oceanside Unified School District | 4991 Macario Drive, Oceanside, CA 92057 (formerly the Pacifica Elementary School site) | **Requested:**May 14, 2021 to May 14, 2024**Recommended:**July 15, 2021 to July 13, 2023 | 2/9/2021 | 2/9/2021Public Hearing Advertised: Notice of the hearing was published in the San Diego County Union Tribune. | California School Employees AssociationMike Zamora, President2/18/2021**Neutral**Oceanside (California) Teacher's AssociationJennifer Skellet, President2/18/2021**Neutral** | Surplus Property Advisory Committee5/11/2021**No Objections** |

Created by the California Department of Education

May 2021

# Attachment 2: **Oceanside Unified School District General** **Waiver Request 19-2-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3773569

Waiver Number: 19-2-2021

Active Year: 2021

Date In: 2/26/2021 3:21:23 PM

Local Education Agency: Oceanside Unified

Address: 2111 Mission Ave.

Oceanside, CA 92058

Start: 5/14/2021

End: 5/14/2024

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 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 publicize the sale and solicit proposals for the purchase of the property, and bring proposals 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 the proposals privately and will maximize the District’s ability to negotiate the most favorable transaction.

*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 one parcel of real property located at 4991 Macario Drive, Oceanside, CA 92057, which was formally the Pacifica Elementary School site referred to herein as (the “Property”). The Property is currently not being used by the District, 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. The District wishes to have the flexibility to structure the sale process in a manner that allows the District to (1) ensure the chosen purchasing entity has the ability to secure the associated entitlements and local government approvals necessary to effectuate the sale of the Property (2) consider the reputation of a purchaser as well as the nature of community involvement associated with the proposal and (3) utilize the services of a commercial real estate agent to expose the Property to the market for such time as necessary to maximize the District’s return.

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 market the Property and request interested parties to submit proposals describing the terms and conditions of their proposed purchase of the Property. District staff, in consultation with legal counsel, will review the proposals and determine which offer 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 proposal process. The District has developed a strategic plan for advertising and marketing the Property and is working closely with legal counsel to seek proposals 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 3 years in order to have the ability to complete a sale and close escrow on a purchase that with local government entitlements, 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: 2/9/2021

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

Local Board Approval Date: 2/9/2021

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

Community Council Reviewed Date: 5/11/2021

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](file:///%5C%5CCDE.Cal%5CDATA%5CEXECDATA%5CCENTRAL%5CSBE%5C2021%5C07%20-%20July%202021%5CWaiver%20Items%5Cspolito%40f3law.com)

Telephone: 760-422-9916

Bargaining Unit Date: 02/18/2021

Name: California School Employees Association (CSEA)

Representative: Mike Zamora

Title: President

Phone: 800-675-9939

Position: Neutral

Bargaining Unit Date: 02/18/2021

Name: Oceanside (California) Teacher's Association (CTA)

Representative: Jennifer Skellet

Title: President

Phone: 760-721-1810

Position: Neutral