

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2021 AgendaItem #W-05

## Subject

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

## Waiver Number

24-6-2021

## Type of Action

Action, Consent

## Summary of the Issues

The Liberty Union High School District (Liberty UHSD) is requesting to waive all of California *Education Code* (*EC*) sections 17473 and 17474, and portions of 17455, 17466, 17469, 17472, and 17475. This will allow the district to maximize its return on the sale or lease of two separate properties by using the Request for Proposal (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 all proposals received be examined and declared by each district’s governing board in a public meeting to allow for public comment prior to any negotiation and/or selection, and 2) that each district's governing board determine and select the most desirable proposal (if any proposal is to be selected at all) 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.

The Liberty UHSD requests that the specified *EC* sections be waived in order to allow the district maximum flexibility in the sale or lease of the Sellers Avenue site at Delta Road in Brentwood, and the Kellogg Creek Road site in an unincorporated part of Contra Costa County. The district has determined that these sites are no longer needed for school purposes. Both sites consist of raw land, each containing no buildings or facilities. The district will work with a broker, who will advertise and solicit proposals from potential buyers or lessees interested in the properties. The desired outcome is that these buyers/lessees will pay the maximum price for the properties and will also enhance the surrounding neighborhoods with their presence. Based on the district’s evaluation of past sales and leases of real property in the areas of these specific properties, it anticipates attracting much greater interest from potential buyers or lessees through the RFP process than through the statutorily required sealed bid process.

The district has a previously approved waiver from the March 2019 State Board of Education (SBE) board meeting (Waiver 10-12-2018, Item W-06, <https://www.cde.ca.gov/be/ag/ag/yr19/documents/mar19w06.docx>). That waiver was also for the sale or lease of these same two properties via the RFP process. The district hired a realtor to assist with the RFP in February 2020, but when the COVID-19 pandemic happened, it was unable to move forward with the RFP process prior to its expiration in October 2020.

### Demographic Information

Liberty UHSD has a student population of 8,222 and is located in Contra Costa 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 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.

These sites have been owned for more than 10 years and there have been no improvements funded by monies from the State School Facilities Program within the last 10 years. However, for the Sellers Avenue site, the Liberty UHSD did, in 2008, initially receive a portion of state financial hardship funding, but has since repaid the State to restore its pupil grants for a future project. 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:** Liberty Union High School District General Waiver Request
24-6-2021 (4 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 24-6-2021 | Liberty Union High School District | Sellers Avenue site at Delta Road, in BrentwoodKellogg Creek Road site, in unincorporated, Contra Costa County | **Requested:**May 4, 2021 to May 4, 2023**Recommended:**September 10, 2021 to May 4, 2023 | 4/14/2021 | 4/14/2021Public Hearing Advertised: Published in the Brentwood Press newspaper, and posted at school sites and the District Office | California School Employees Association Richie Masadas, President4/5/2021**Support**Liberty Education AssociationHillary Pedrotti, President4/5/2021**Neutral** | Liberty High School Site Council4/22/2021**No Objections** |

Created by the California Department of Education

July 2021

# Attachment 2: **Liberty Union High School District General** **Waiver Request 24-6-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 0761721

Waiver Number: 24-6-2021

Active Year: 2021

Date In: 6/30/2021 11:06:45 AM

Local Education Agency: Liberty Union High

Address: 20 Oak St.

Brentwood, CA 94561

Start: 5/4/2021

End: 5/4/2023

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: 17455,17466,17469,17472-17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Liberty Union High School District desires to waive the following sections and portions of the Education Code lined out below:

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 Liberty Union High School District requests the specified *Education Code* sections be waived in order to allow the District to maximize the return on the sale or lease of one of its sites in a manner that best serves our schools and community. The District would like to offer the property for sale or lease through Requests for Proposals followed by further negotiations using the services of a broker who will advertise and solicit proposals from potential buyers. The article referenced by *Education Code* Section 17455 consists of sections 17455 through 17484, which contain provisions regarding the sale or lease of real property that are inconsistent with the manner in which the District hopes to market the property.

The District will work closely with consultants to ensure that the process by which the property is sold or leased is fair, open, and competitive. The process the District will use will be designed to get the best result for the District, the schools, and the community.

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].

Rationale: The language to be waived provides for a minimum price or rental and requires sealed proposals to purchase or lease the property. This requirement restricts the District's flexibility in negotiating price, payments, and other terms that may yield greater economic and other benefits to the District than a sealed bid process.

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[, net 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: Since the District is requesting to waive the requirement that the resolution adopted pursuant to *Education Code* Section 17466 fix a time not less than three weeks thereafter for a public meeting at which sealed proposals will be received and considered, it also seeks to waive the corresponding provisions in Section 17469.

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: With a waiver of the requirement that sealed proposals be received, and that the highest bidder be awarded the contract, the District will be able to sell or lease the property to the party that presents the most favorable proposal to the District. The Board would, therefore, be able to sell or lease to the party submitting the proposal that best meets the District's needs. By removing the requirement that an oral bid be accepted, the District would be able to determine what constitutes the most desirable bid.

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 District asks that this entire section be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids in addition to sealed bids.

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 District asks that this entire section to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

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: Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in disposing of the property disposal process. The District will ensure a public process whereby the reasons for the determination of the most desirable proposal is shared openly. Prior to the decision to sell or lease a site, a Property Advisory Committee, whose purpose is to advise the District's Governing Board in the development of District-wide policies and procedures governing the use or disposition of school buildings, space, or property which Is not used for school purposes, establishes a priority list of use of surplus space and real property, provides for hearings of community input on acceptable uses of space and real property, and makes a recommendation to the Board regarding the uses of surplus space and real property.

Outcome Rationale: The Liberty Union High 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 or sale of the District's Sellers Avenue at Delta Road, Brentwood, California site or Kellogg Creek Road, Unincorporated, Contra Costa County site. The District has determined that this site is no longer needed for school purposes. It is the desire of the District to attract potential lessees or buyers who will not only pay maximum price for the property, but who will also enhance the surrounding neighborhood. Based on past leases and sales of real property in our area and the location of the property, the District anticipates attracting a much greater interest from potential lessees or buyers through a Request for Proposal process than a bid process.

Student Population: 8,222

City Type: Suburban

Public Hearing Date: 4/14/2021

Public Hearing Advertised: Published in the newspaper (the Brentwood Press) and posted at school sites and District Office.

Local Board Approval Date: 4/14/2021

Community Council Reviewed By: Liberty High School Site Council

Community Council Reviewed Date: 4/22/2021

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Liz Robbins

Position: Chief Business Officer

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Telephone: 925-634-2166 x2030

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Bargaining Unit Date: 04/05/2021

Name: CSEA

Representative: Richie Masadas

Title: President

Position: Support

Bargaining Unit Date: 04/05/2021

Name: Liberty Education Association

Representative: Hillary Pedrotti

Title: President

Position: Neutral