

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education May 2022 Agenda Item #W-01

## Subject

Request by the **Turlock Unified School District** to waive California *Education Code* sections specific to statutory provisions for the commissioning of an advisory committee and for the sale or lease of surplus property.

## Waiver Number

16-12-2021

## Type of Action

Action, Consent

## Summary of the Issues

The Turlock Unified School District (Turlock USD) is requesting to waive all of California *Education Code* (*EC)* sections 17388, 17389, 17390, 17473, and 17474, as well as portions of sections 17455, 17464, 17466, 17469, 17472, and 17475, which will allow the district to 1) bypass the commissioning of an advisory committee, and 2) sell or lease one piece of property through 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 any proposals received be examined and declared by the district’s governing board in a public meeting to allow for public comment prior to making a selection, and 2) that the district's governing board determines and selects the most desirable transaction 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* be waived, relating to 1) the commissioning of an advisory committee, and 2) the sale or lease of surplus property.

In 2017, the State Water Control Board determined that the well water at the property located at 312 South Roselawn Avenue (the former site of Roselawn High School) was contaminated with uranium, which led the district to purchase bottled water for students and staff at a cost of $3,000 per month. This finding limits the ability of public-agency uses for the property. In addition, the location of the property is outside of the city limits and it does not have access to municipal services such as water and support from the Turlock Police Department. The property is serviced by the Stanislaus County Sheriff’s Department, but to get an immediate response from law enforcement, the district was required to contract with the City of Turlock.

The district is seeking to waive the *EC* sections stipulating the commissioning of an advisory committee to review the disposition of the property. Prior to selling district-owned property, a district’s governing board must appoint a 7-11 Advisory Committee, consisting of no less than seven members and no more than 11 members, in accordance with the criteria set forth in *EC* Section 17389. The 7-11 Advisory Committee examines current and future facility needs, enrollment, and any other factors that may impact the need to retain the property; holds public meetings to examine any property in question; establishes a list prioritizing uses for any unused property; and, finally, submits a report to the governing board with recommendations as to whether or not the property should be declared surplus.

Due to imminent health and safety issues, the Board of Trustees acted to close the school and declare the property surplus without appointing a 7-11 Advisory Committee, as required by *EC* Section 17388. The Board of Trustees has conducted several public meetings, starting in 2017, to discuss the disposition and future use of this property. The final meeting, held on June 15, 2021, was the public hearing for the adoption of Resolution 32/2020-21, approving the submittal of a State Board of Education waiver request and declaring the property surplus, wherein no public comments nor concerns were brought forth. Additionally, the district consulted with its employee bargaining units and with the Roselawn Continuation High School Site Council, none of which had any objections to this waiver request or the property being declared surplus.

Turlock USD also requests that the specified *EC* sections be waived in order to allow the district to sell or lease the property in a manner that best serves its schools and community. The property is located in an unincorporated area surrounded by agricultural land and is not served by any municipal services or infrastructure. The students and staff previously occupying the site have been relocated, as the site is no longer suitable for educational purposes. Based on the unique characteristics of the property, including its location and the nature of the surrounding properties, the district believes that a more flexible RFP process is appropriate.

### Demographic Information

Turlock USD has a student population of 13,500 and is located in Stanislaus 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.

The SBE has never considered the waiving of EC sections 17388 through 17390 regarding the waiving of the 7-11 Advisory Committee. The district has been through a lengthy public process regarding this site and its continued use due to the presence of imminent health and safety concerns. Throughout this process, there have been no objections or concerns from the community in declaring this property surplus and its disposal.

Fiscal Analysis

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

The district 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:** Turlock Unified School District General Waiver Request 16-12-2021 (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** | **Properties** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 16-12-2021 | Turlock Unified School District | Former Roselawn High School site, located at 312 South Roselawn Avenue in Turlock. | **Requested:** December 21, 2021 to December 21, 2023  **Recommended:** May 19, 2022 to December 21, 2023 | 6/15/2021 | 6/15/2021  Public Hearing Advertised: District website, paper agenda postings in town, as well as in the Turlock Journal | California State Employees Association Domenic Bagnani, First Vice President 5/24/2021 **Support**  Turlock Federation of Classified Employees Cecilia Chavez, President 5/24/2021 **Support**  Turlock Teachers Association Christine Rowell, President 5/20/2021 **Support** | Roselawn Continuation School Site Council 6/15/2021 **No Objections** |

Created by the California Department of Education

February 2022

## Attachment 2: **Turlock Unified School District General** **Waiver Request 16-12-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 5075739

Waiver Number: 16-12-2021

Active Year: 2021

Date In: 12/21/2021 2:04:39 PM

Local Education Agency: Turlock Unified

Address: 1574 East Canal

Turlock, CA 95380

Start: 12/21/2021

End: 12/21/2023

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale or Lease of Surplus Property

*Ed Code* Sections: 17388-17390, 17455, 17464, 17466, 17469, 17472, 17473, 17474, and 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Turlock Unified 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* Section 17388. [The governing board of any school district may, and the governing board of each school district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.]

*EC* Section 17389. [A school district advisory committee appointed pursuant to Section 17388 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:

(a) The ethnic, age group, and socioeconomic composition of the district.

(b) The business community, such as store owners, managers, or supervisors.

(c) Landowners or renters, with preference to be given to representatives of neighborhood associations.

(d) Teachers.

(e) Administrators.

(f) Parents of students.

(g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located.]

*EC* Section 17390. [The school district advisory committee shall do all of the following:

(a) Review the projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property.

(b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property.]

*EC* Section 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].

*EC* Section 17464. Except as provided for in Article 2 (commencing with Section 17230) of Chapter 1, the sale or lease with an option to purchase of real property by a school district shall be in accordance with the following priorities and procedures:

(a) First, the property shall be offered for sale or lease pursuant to Section 17457.5 to any interested charter school for purposes of providing direct instruction or instructional support.

[(b) Second, the property shall be offered for park or recreational purposes pursuant to Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the *Government Code*, in any instance in which that article is applicable.

(c) Third, the property shall be offered for sale or lease with an option to purchase, at fair market value in both of the following ways:

(1) In writing, to the Director of General Services, the Regents of the University of California, the Trustees of the California State University, the county and city in which the property is situated, to any public housing authority in the county in which the property is situated, and to any entity referenced in paragraph (2) that has submitted a written request to the school district to be directly notified of the offer for sale or lease with an option to purchase the real property by the school district.

(2) By public notice to any public district, public authority, public agency, public corporation, or any other political subdivision in this state, to the federal government, and to nonprofit charitable corporations existing on December 31, 1979, and organized pursuant to Part 3 (commencing with Section 10200) of Division 2 of Title 1 of the *Corporations Code* then in effect or organized on or after January 1, 1980, as a public benefit corporation under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the *Corporations Code*. Public notice shall consist of at least publishing its intention to dispose of the real property in a newspaper of general circulation within the school district, or if there is no newspaper of general circulation in the school district, then in any newspaper of general circulation that is regularly circulated in the school district. The notice shall specify that the property is being made available to all public districts, public authorities, public agencies, and other political subdivisions or public corporations in this state, and to other nonprofit charitable or nonprofit public benefit corporations.

(d) Publication of notice pursuant to this section shall be once each week for three successive weeks. Three publications in a newspaper regularly published once a week or more often, with at least five days intervening between the respective publication dates not counting the publication dates, are sufficient. The written notice required by paragraph (1) of subdivision (c)shall be mailed no later than the date of the second published notice.]

(e) The entity desiring to purchase or lease the property shall, within 60 days after the third publication of notice, notify the school district of its intent to purchase or lease the property. If the entity desiring to purchase or lease the property and the school district are unable to arrive at a mutually satisfactory price or lease payment during the 60-day period, the property may be disposed of as otherwise provided in this section. In the event the school district receives offers from more than one entity pursuant to this subdivision, the school district governing board may determine which of these offers to accept.

(f) Fourth, the property may be disposed of in any other manner authorized by law.

(g) This section shall become operative January 1, 1988.

*EC* Section 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].

*EC* Section 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].

*EC* Section 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.]

*EC* Section 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.]

*EC* Section 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.]

*EC* Section 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 Turlock Unified School District desires to have the requested *Education Code* sections, or portions thereof, waived to allow the District to maximize its return on the sale or lease of the District's former Roselawn High School site, located at 312 South Roselawn A venue, in unincorporated Stanislaus County, California. A map and image of the property are attached. The District has determined that this site is no longer needed for school purposes (the continuation high school was relocated due to the well water issue described below). The property is located in an unincorporated area surrounded by agricultural land and is not served by any municipal services or infrastructure. In 2017 it was determined by the State Water Control Board that the well water at the property was contaminated with uranium. These property characteristics limit the ability of public agency uses for the property. Per the Housing Element of the City's General Plan and the General Plan of the County of Stanislaus, the property is not located in an area economically viable for residential development, due at least in part to the lack of available infrastructure for multiple units, as opposed to a single-family residence. Based on the unique characteristics of the property including its location and the nature of the surrounding properties, the District believes that a more flexible, Request for Proposal process is more appropriate than a bid process.

Student Population: 13,500

City Type: Rural

Public Hearing Date: 6/15/2021

Public Hearing Advertised: District website, paper agenda posting in town, as well as local newspaper (the Turlock Journal)

Local Board Approval Date: 6/15/2021

Community Council Reviewed By: Roselawn Continuation School Site Council

Community Council Reviewed Date: 5/19/2021

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Barney Gordon

Position: Assistant Superintendent of Business Services

E-mail: [bgordon@turlock.k12.ca.us](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2022\05%20May%202022\Property\bgordon@turlock.k12.ca.us)

Telephone: 209-667-0632 x2302

Bargaining Unit Date: 5/24/2021

Name: California State Employees Association

Representative: Domenic Bagnani

Title: First Vice President

Phone: 209-604-8015

Position: Support

Bargaining Unit Date: 5/24/2021

Name: Turlock Federation of Classified Employees

Representative: Cecilia Chavez

Title: President

Phone: 209-535-1832

Position: Support

Bargaining Unit Date: 5/20/2021

Name: Turlock Teachers Association

Representative: Christine Rowell

Title: President

Phone: 209-668-9600

Position: Support