

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2018 AgendaItem #W-22

## Subject

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

## Waiver Number

1-5-2018

## Type of Action

Action, Consent

## Summary of the Issue

The Pomona Unified School District (District) is requesting a waiver of California *Education Code* sections 17473 and 17474, and portions of 17455, 17466, 17468, 17469, 17470, 17472, and 17475, which will allow the District to maximize the return on the sale or lease of four properties in a manner that best serves their schools and community.

## Authority for Waiver

California *Education Code (EC)* sections 33050-33053

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval with the following conditions: that the final acceptance by the governing board of the Pomona Unified School District be made within 60 days of the meetings in which the proposals are received, and that the reasons for the acceptance be discussed in public session and included in the minutes of the meetings.

## Summary of Key Issues

Under provisions of *EC* sections 33050 through 33053, the District is requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

The Pomona Unified School District owns several parcels of surplus property located in the City of Pomona. These properties are located at:

* 1425 E. Holt Avenue, Pomona, CA (known as the Tower Property);
* 555 N. East End Avenue, Pomona (known as the East End Property);
* 2255 S. Garey Avenue, Pomona (known as the Rio Rancho/Bonanza Property);
* 1300 N. Dudley Street, Pomona (known as the Dudley-Murchison Property).

The District has acted in accordance with *EC* Section 17464 and *Government Code* Section 54222 regarding offers of the various surplus properties to specified public entities. The District is now seeking the ability to negotiate the sale or lease of the surplus properties with suitable purchasers/developers/lessees utilizing the Request for Proposals process.

On April 18, 2018, the Board of Education for the District adopted a resolution declaring its intent to sell or lease these surplus properties, pending approval of this waiver. The District does not believe that attempting to follow the competitive bidding process will be effective and desires to secure a waiver to provide the District with the flexibility to enable the District to negotiate a satisfactory sale or lease agreement for each of the properties.

The sale or lease of surplus properties will allow the District to reallocate resources away from oversight and maintenance of the properties and toward vital student facilities and programs, both streamlining District operations and enhancing direct fiscal support of its students and families.

The District has indicated a preference for selling the properties, but is open to the possibility of leasing them if sales do not transpire.

The advisory committee that was originally consulted was the Superintendent’s Advisory Board. However, CDE staff did not view this an appropriate committee, as required by *EC* Section 33051(a)(3), because there was no community involvement. To resolve the issue, the District subsequently consulted the Measure P Council, which does include members of the public and is considered to be appropriate for this waiver request.

**Demographic Information:**

The Pomona Unified School District has a student population of 23,741 and is located in a suburban area of Los Angeles County.

Because this is a general waiver, if the State Board of Education decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available 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 State Board of Education 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 (as appropriate)

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

These sites have been owned for more than ten years and there have not been any improvements funded by monies from the State School Facilities Program within the last ten years. Therefore, pursuant to *Education Code* Section 17462.3, no financial reimbursement is due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:**  Pomona Unified School District General Waiver 1-5-2018 (Original waiver request is signed and on file in the Waiver Office.) (7 pages)

# Attachment 1: Summary Table

California *Education Code* (*EC*) Section 41402

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-5-2018  | Pomona Unified School District | 1425 E. Holt Avenue, Pomona, CA (the Tower Property)550 N. East End Avenue, Pomona, CA (the East End Property)2255 S. Garey Avenue, Pomona, CA (the Rio Rancho/Bonanza Property)1300 N. Dudley Street, Pomona, CA (the Dudley-Murchison Property) | **Requested:**May 1, 2018 to April 30, 2020**Recommended:** May 1, 2018 to April 28, 2020 | 4/18/2018 | 4/26/2018 Public Hearing Advertised: Posted on the District’s website, printed in the local newspaper, and posted on public locations within the jurisdiction. | Associated Pomona TeachersDorothy Kim-Perez, APT President4/27/2018**Support**California Service Employees AssociationMariana Orozco, Chapter President4/26/2018**Support** | Measure P Council06/12/2018 |

Created by the California Department of Education

May 8, 2018

# Attachment 2: Waiver # 1-5-2018**Pomona Unified School District General**

CD Code: 1964907

Waiver Number: 1-5-2018

Active Year: 2018

Date In: 5/1/2018 6:29:38 AM

Local Education Agency: Pomona Unified School District

Address: 800 South Garey Ave., Pomona, CA 92408

Start: 5/1/2018

End: 4/30/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17466, 17468-17470, 17472-17475

Ed Code Authority: 33050

Education Code or CCR to Waive: See attached.

Outcome Rationale: See attached.

Student Population: 23741

City Type: Suburban

Public Hearing Date: 4/26/2018

Public Hearing Advertised: Posted on the District's website, printed in local newspaper, and posted on public locations within the jurisdiction.

Local Board Approval Date: 4/18/2018

Community Council Reviewed By: Superintendent's Advisory Board

Community Council Reviewed Date: 4/30/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stanley Stringfellow

Position: General Counsel

E-mail: sstringfellow@mohlaw.com

Telephone: 909-890-9500

Bargaining Unit Date: 04/27/2018

Name: Associated Pomona Teachers

Representative: Dorothy Kim-Perez

Title: APT President

Position: Support

Comments: None

Bargaining Unit Date: 04/26/2018

Name: California Service Employees Association

Representative: Mariana Orozco

Title: Chapter President

Position: Support

Comments: None

**POMONA UNIFIED SCHOOL DISTRICT WAIVER REQUEST**

The following specific waiver (strike out) is requested:

## Education Code § 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 is to be waived since the District is asking that several provisions of the article be waived and consequently, the sale will not be made in the manner provided in Article 4.

## Education Code § 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, 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 establish a minimum price and receive sealed proposals for the purchase of the property at an identified meeting of the District's governing board. The District is requesting that the requirement of sealed proposals to purchase and property be waived, allowing the District to negotiate the sale of the surplus properties with interested purchasers. 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 develop a strategic plan for advertising and marketing the property in order to solicit proposals from not only the prospective purchasers/developers who attended the District's Pre-Bid meetings, but also other potential purchasers in

the development community. The proposals will be brought to the governing board when necessary to consider the approval of a sale.

## Education Code § 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 proposals and oral bids to purchase 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 the property be waived, allowing the District to negotiate the sale of the surplus properties with interested purchasers.

## Education Code § 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 District Board would be setting a specific meeting to receive proposals for the purchase of the surplus properties. Such a requirement, however, will be removed pursuant to the language stricken within *EC* 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.

## Education Code § 17470.

1. 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 hearing prescribed by Section 17466,] in writing, by certified mail, [at least 60 days prior to the meeting.]
2. 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 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 of the surplus properties. Such a requirement, however, will be removed pursuant to the language stricken within *EC* 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.

## Education Code § 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 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 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 the property be waived, allowing the District to negotiate the sale of the former LeBard Elementary School Site with an interested purchaser.

## **Education Code § 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 the surplus properties, will not be accepting oral bids.

## Education Code § 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 the surplus properties, will not be accepting oral bids.

## **Education Code § 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.

Attached is Resolution No. 26, which was adopted by the District's Board of Trustees on April 18, 2018, declaring its intention to sell and/or lease the surplus properties. A signed copy of the resolution is available upon request.

## Attachment to "Waiver Information" Section

*Describe briefly the circumstances that brought about the request and why the waiver is necessary to achieve important student performance and/or streamline or facilitate local agency operations.*

The Pomona Unified School District owns several parcels of surplus property located in the City of Pomona. The District has acted in accordance with California Education Code section 17464 and Government Code section 54222 regarding offers of the various surplus properties to specified public entities. The District is now seeking the ability to negotiate the sale and/or lease of the surplus properties with a suitable purchaser/developer/lessee utilizing the Request for Proposals process.

On April 18, 2018, the Board of Education for the Pomona Unified School District adopted a resolution declaring its intent to sell and/or lease surplus property, pending approval of this waiver. The District does not believe that again attempting to follow the above-referenced competitive bidding process will be effective and desires to secure a waiver to provide the District with the greatest flexibility to enable the District to negotiate a satisfactory sale and/or lease agreement.

The sale and/or lease of surplus properties will allow the district to reallocate resources away from oversight and maintenance of the properties and toward vital student facilities and programs, both streamlining District operations and enhancing direct fiscal support of its students and families.