

California Department of Education

Executive Office

SBE-005 (REV. 11/2017)

General Waiver

# California State Board of Education March 2018 AgendaItem #W-08

## Subject

Request by five school districts to waive all or portions of California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Capistrano Unified School District 14-12-2017
* Compton Unified School District 22-12-2017
* Covina-Valley Unified School District 31-12-2017
* Hughson Unified School District 21-11-2017
* South Pasadena Unified School District 18-12-2017

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Capistrano Unified School District is requesting a waiver of California *Education Code* sections 17473 and 17474, and portions of 17455, 17466, 17472, and 17475, which will allow the district to maximize the return on the lease of the site in a manner that best serves their school and community.

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

The Covina-Valley Unified School District is requesting a waiver of California *Education Code* sections 17466, 17469, 17472, 17473, 17475, 17486, 17488, 17489, 17495, and 17498, and portions of 17455 and 17491, which will allow the district to maximize the return on the lease of the site in a manner that best serves their school and community.

The Hughson Unified School District is requesting a waiver of California *Education Code* sections 17473 and 17474, and portions of 17466, 17472, and 17475, which will allow the district to maximize the return on the lease of the site in a manner that best serves their schools and community.

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

## Authority for Waiver

*Education Code (EC)* sections 33050-33053

## Recommendation

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

The California Department of Education recommends approval with the following conditions: that the final acceptance by the governing boards of the Capistrano, Compton, Covina-Valley, Hughson, and South Pasadena Unified School Districts 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 districts are requesting that specific portions of the *EC* relating to the lease of surplus property be waived.

The Capistrano Unified School District requests that the specified *Education Code* sections be waived in order to allow the District to maximize the return on the lease of its site located at 26126 Victoria Boulevard, Dana Point, California 92624, known as the

South Bus Yard, in a manner that best serves their schools and community. The property is an irregularly shaped parcel previously used for maintenance and bus storage, and therefore is not considered a traditional property for leasing. This Request for Proposals (RFP) process will allow the District to seek and identify entities interested in the property based on its unique features and maximize its return on the lease of the property to the greatest extent possible. The District will work to develop a strategic plan for advertising and marketing the property in order to solicit proposals from potential lessees interested in the property. The District will work closely with legal counsel to ensure that the process by which the property is leased is fair and open. The District will seek proposals from a number of sources by sending the RFP documents to individuals who may be interested and making it available to the general public.

The Compton Unified School District owns an approximately 13,986 square-foot building located at 515 East Compton Boulevard in Compton, California. The building is unsafe, in deteriorating conditions, and is surrounded by other buildings in similar and abandoned conditions. The District's governing board declared the property surplus and twice tried to sell it through the bid process, but did not receive any acceptable bids. Due to the dilapidated and unsafe condition of the building and the surrounding properties, it is not a good candidate for sale through the bid process. Therefore, it is best for the District to directly negotiate with interested purchasers seeking to redevelop the area.

The Covina-Valley Unified School District requests that the specified *Education Code* sections relating to the lease of surplus property be waived in order to allow the District to lease the approximately three acres of open space land adjacent to Barranca Elementary School, which is located at 727 S. Barranca Avenue, in the city of Covina within the county of Los Angeles. The property is former parkland of the city of Covina, and is currently unimproved open space situated directly adjacent to the Cory Lidie Baseball Little League fields operated by the Cory Lidie Foundation, Inc. In its current condition, the property does not enhance the value of the land or maximize the recreational opportunities for the school, and instead creates a safety and security concern for the school. The district seeks to waive the competitive selection requirements so it can directly negotiate with an unsolicited proposer to maximize the proceeds from the lease.

The Hughson Unified School District requests that the specified *Education Code* sections be waived in order to allow the District to sell the approximately 25 acres of land located on the corner of 7th Street and Whitmore Avenue (known as the Camagna Property) in Hughson, California in a manner that best serves their schools and community. The District will work with a broker to develop a strategic plan for advertising and marketing the property in order to solicit proposals from potential buyers interested in the property. The sale of the property will allow the District to continue to provide a high-quality educational experience for its students. The District will work closely with consultants to ensure that the process by which the property is sold is fair, open, and competitive.

The South Pasadena Unified School District owns approximately three acres of property located at 1020 El Centro Street, South Pasadena, California 91030, commonly referred to as the District office. The District's governing Board declared the property surplus because it no longer uses or needs the property. The District determined that it is comfortable with either leasing or selling the property, depending on which will provide the District the most benefit. The District will work closely with legal counsel to develop an RFP seeking proposals for either the purchase or lease of the property and develop a fair and open process by which the property is leased or sold. This waiver request was originally submitted to the District Board of Education concurrently, as an advisory committee was consulted. This was not acceptable, so after further correspondence with the District, documentation was provided substantiating an appropriate committee was consulted, which was the Surplus Property Advisory Committee.

**Demographic Information:**

The Capistrano Unified School District has a student population of 49,117 and is located in an urban area of Orange County.

The Compton Unified School District has a student population of 26,000 and is located in an urban area of Stanislaus County.

The Covina-Valley Unified School District has a student population of 11,910 and is located in a suburban area of Stanislaus County.

The Hughson Unified School District has a student population of 1,996 and is located in a rural area of Stanislaus County.

The South Pasadena Unified School District has a student population of 4,794 and is located in an urban 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** <http://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 districts are requesting to waive the same or similar provisions for the lease of surplus property.

## Fiscal Analysis (as appropriate)

The flexibility in property disposition requested herein will allow the Capistrano Unified School District to maximize revenue from the lease of the property.

The flexibility in property disposition requested herein will allow the Compton Unified School District to maximize revenue from the sale of the property.

The flexibility in property disposition requested herein will allow the Covina-Valley Unified School District to maximize revenue from the lease of the property.

The flexibility in property disposition requested herein will allow the Hughson Unified School District to maximize revenue from the sale of the property.

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

These sites have been owned for more than ten years and there have been no 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.

## Attachment(s)

* **Attachment 1:** Summary Table (3 pages)
* **Attachment 2:** Capistrano Unified School District 14-12-2017 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Compton Unified School District 22-12-2017 (7 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Covina-Valley Unified School District 31-12-2017 (10 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** Hughson Unified School District 21-11-2017 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 6:** South Pasadena Unified School District 18-12-2017 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board and Public Hearing Date** | **Bargaining Unit, Representatives Consulted, Date, and Position** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- |
| 14-12-2017 | Capistrano Unified | 5.51 acre property located at 26126 Victoria Blvd, Dana Point, CA 92624, known as theSouth Bus Yard property | **Requested:** December 14, 2017 to December 14, 2018**Recommended:** March 15, 2018 to December 14, 2018 | 9/13/2017Public Hearing Advertised:Notice was posted at the District's office, the property, andthe District's website and published in the OC Register | California School Employees AssociationRonda Whalen, President12/1/2017**Support**Capistrano Unified Education AssociationSally White, President11/29/2017**Suppor**tCUSD Facilities and Finance Advisory CommitteeRon Ruef, Chairperson11/16/2017**Support**Teamsters Local 952Grant Maertz, Union Representative11/29/2017**Support** | The District's Property Advisory Committee2/22/2017 |
| 22-12-2017 | Compton Unified | Approximately13,986 square-foot property located at 515 East Compton Boulevard in Compton, CA | **Requested:**March 1, 2018 to March 1, 2020**Recommended:** March 15, 2018 to March 1, 2020 | 7/7/2017Public Hearing Advertised: Newspaper, District Website, Public Places within theDistrict | Teamsters Local 911Michael Duenas, Business Representative12/14/2017**Neutral** | Facilities Committee8/2/2017 |
| 31-12-2017 | Covina-Valley Unified | Approximately three acres of open space land adjacent to BarrancaElementary School, located at 727 S. Barranca Avenue, in the City of Covina, County of Los Angeles | **Requested:**December 18, 2017 to December 17, 2019**Recommended:** March 15, 2018 to December 17, 2019 | 12/18/2017Public Hearing Advertised: Published in the San Gabriel Valley Tribune; posted at the Dr. Mary Hanes Board Room and Professional Development Center, on the District's website, and at the District Office | California School Employees AssociationVivan Garcia, President11/13/2017**Support**Covina Unified Education AssociationSita Rampershad, President11/13/2017**Support**Covina-Valley Association of School PsychologistsMartha Engle, President11/13/2017**Neutral** | District Advisory Committee(7-11 Surplus Property Committee)12/1/2017 |
| 21-11-2017 | Hughson Unified | 25 acres of land located on the corner of 7th Street & Whitmore Avenue, known as the Camagna Property | **Requested:**January 1, 2018 to December 31, 2020**Recommended:**March 15, 2018 to December 31, 2020 | 11/14/2017Public Hearing Advertised:Local newspaper (Modesto Bee 11/2/2017), all school sites,district office, district website, local library, post office and business (Hamilton's) | California School Employees AssociationRandy Robinson, President7/21/2017**Neutral**Hughson Educators Association (HEA)Jeff Clayton, President7/21/2017**Support** | All school site councils (7/21/2017 - 10/24/2017)10/24/2017 |
| 18-12-2017 | South Pasadena Unified | Three acres of property located at1020 El Centro St., South Pasadena, CA 91030 | **Requested:**December 14, 2017 to December 14, 2018**Recommended:**March 15, 2018 to December 14, 2018 | 10/10/2017Public Hearing Advertised: Notice was posted at the District Office per the Brown Act and posted on the District's website | California School Employees Association Chapter 17Steven Reyes, President10/3/2017**Support**Teachers Association South PasadenaEstela Morales, President10/18/2017**Support** | Surplus Property Advisory Committee1/12/2009 |

Created by the California Department of Education

December 27, 2017

# Attachment 2: 14-12-2017 Capistrano Unified School District

California Department of Education

WAIVER SUBMISSION – General

CD Code: 3066464

Waiver Number: 14-12-2017

Active Year: 2017

Date In: 12/13/2017 8:53:04 AM

Local Education Agency: Capistrano Unified School District

Address: 33122 Valle Rd.

San Juan Capistrano, CA 92675

Start: 12/14/2017

End: 12/14/2018

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Lease of Surplus Property

Ed Code Section: 17455, 17466, 17472, 17473, 17474, 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: The Capistrano 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].

*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 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 a lease agreement that provides the most benefit to the District. 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 a lease.

*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 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 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 a lease agreement that provides the most benefit to the District. 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 lease terms that are more beneficial to the District. Thus, the District seeks to eliminate the language which requires it to lease to the highest bidder.

*EC* 17473. WAIVE ENTIRE SECTION (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 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 a lease agreement that provides the most benefit to the District. 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 SECTION [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 purpose of this request is to allow the District to waive the sealed proposal requirement of *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 a lease agreement that provides the most benefit to the District. 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 purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for 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 a lease agreement that provides the most benefit to the District. 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: Capistrano Unified School District ("District") owns approximately

5.51 acre property located at 26126 Victoria Blvd, Dana Point, CA 92624, known as the

South Bus Yard property ("Property"). The District's governing Board declared the

Property surplus and decided to lease the Property pursuant to *Education Code* section

17466 et seq. which 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 lease procedure set forth in

*Education Code* section 17466 et seq. The Property is an irregularly shaped parcel previously used for maintenance and bus storage and therefore, is not considered a traditional property for leasing. This RFP process will allow the District to seek and identify entities interested in the Property based on its unique features and maximize its return on the lease of the Property to the greatest extent possible.

Since the Property was not used as a school site, and is in a unique location, the District needs to be flexible to find a party interested in using the Property. 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 potential lessees interested in the Property.

The District will work closely with legal counsel to ensure that the process by which the

Property is leased is fair and open. The District will seek proposals from a number of sources by sending the RFP documents to individuals who may be interested and making it available to the general public.

Student Population: 49117

City Type: Urban

Public Hearing Date: 9/13/2017

Public Hearing Advertised: Notice was posted at the District's office, the Property, and the District's website and published in the OC Register

Local Board Approval Date: 9/13/2017

Community Council Reviewed By: The District's Property Advisory Committee

Community Council Reviewed Date: 2/22/2017

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen Mcloughlin

Position: Attorney for District

E-mail: smcloughlin@aalrr.com

Telephone: 562-653-3200 x3821

Bargaining Unit Date: 12/01 /2017

Name: California School Employees Association

Representative: Ronda Whalen

Title: President

Position: Support

Bargaining Unit Date: 11/29/2017

Name: Capistrano Unified Education Association

Representative: Sally White

Title: President

Position: Support

Bargaining Unit Date: 11/16/2017

Name: CUSD Facilities and Finance Advisory Committee

Representative: Ron Ruef

Title: Chairperson

Position: Support

Bargaining Unit Date: 11/29/2017

Name: Teamsters Local 952

Representative: Grant Maertz

Title: Union Representative

Position: Support

# Attachment 3: 22-12-2017 Compton Unified School District

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 197343

Waiver Number: 22-12-2017

Active Year: 2017

Date In: 12/15/2017 2:51:51 PM

Local Education Agency: Compton Unified School District

Address: 501 South Santa Fe Ave.

Compton, CA 90221

Start: 3/1/2018

End: 3/1/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: See Attached

Outcome Rationale: See Attached

Student Population: 26000

City Type: Urban

Public Hearing Date: 7/7/2017

Public Hearing Advertised: Newspaper, District Website, Public Places within the District

Local Board Approval Date: 7/7/2017

Community Council Reviewed By: Facilities Committee

Community Council Reviewed Date: 8/2/2017

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Alejandro Alvarez

Position: Deputy Superintendent, CAO

E-mail: alalvarez@compton.k12.ca.us

Telephone: 310-639-4321 x55052

Bargaining Unit Date: 12/14/2017

Name: Teamsters Local 911

Representative: Michael Duenas

Title: Business Representative

Position: Neutral

## Attachment A

***Outcome Rationale:*** The Compton Unified School District (“District”) owns an approximately 13,986-square foot property located at 515 East Compton Boulevard in Compton, California (“Property”). The Property is unsafe, in deteriorating conditions, and is surrounded by other buildings in similar abandoned conditions. The District’s governing Board declared the Property surplus and twice tried to sell the Property pursuant to Education Code section 17466 et seq. Pursuant to the traditional “bid method” set forth in Education Code sections 17466 et seq., the District must conduct a formal bid hearing process in which the District solicits bids and then enters into a purchase and sale agreement with the winning bidder. The District previously attempted to sell the Property, twice, through the bid process, but did not receive any acceptable bids. Due to the dilapidated and unsafe condition of the Property and the surrounding properties, the Property is not a good candidate for sale through the bid process. Therefore, it is best for the District to directly negotiate with interested purchasers seeking to redevelop the area.

By directly negotiating with interested purchasers, the District would be able to maximize its return on the sale of the Property to the greatest extent possible, and not continue expending money on the public bidding process. The District anticipates that by directly reaching out to interested purchasers, the District would be able to attract quality purchasers.

Again, the District tried to sell the Property twice through the bid process, but was unable to attract any bids which demonstrates that the bid auction scenario is unlikely to attract serious and capable buyers to this Property if the District conducts another bid proceeding. The District needs the ability to be flexible and work with potential purchasers to sell this Property. A waiver from the surplus property requirements would allow the District to do this. The District will work to develop a strategic plan to solicit offers from serious buyers, and any sell will be approved by the District’s Board.

The District will work closely with legal counsel to ensure that the process by which the Property is sold is fair and open. As indicated above, such a process will produce a better result than another bid auction for both the District and the community.

The District requests that the following bracketed (“[ ]”) Education Code sections be waived:

## 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 purpose of this request is to allow the District to enter negotiations with interested buyers for the purchase of 515 E Compton Blvd, Compton, CA (“Property”). The bracketed language above indicates that the sale of the Property will be made in the manner provided by this Article, including the requirement to solicit bid proposals and accept the highest bid, however, per this application, the District is requesting that the bracketed language above and several provisions of the Article as further set forth below be waived and that the sale 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 a 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:***  On two separate occasions, the District’s Board of Trustees (“Board”) adopted resolutions declaring its intention to sell the Property per Section 17466 (List Resolution Numbers 16/17-87 and 17/18-16) and used the sealed bid proposal process to seek written bids. No written or oral bid proposals were received for the Property. Therefore, the District is asking that the bracketed language in Section 17466 be waived to allow the District to directly negotiate the sale with interested purchasers at the highest possible price and best terms for the District. Any sale of the Property will be approved by the District’s Board.

## 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 state 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 bracketed language in Section 17468 indicates the District will receive sealed proposals and oral bids to purchase the Property at an identified meeting of the 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 Property 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.] Strike all the language.

***Rationale:*** The District unsuccessfully conducted the bidding process twice, adopting resolutions and posting them in newspapers of general circulation and in public places within the District. Therefore, the District is requesting the bracketed language be waived to enable the District to negotiate directly with interested purchasers. The language assumes the Board would be setting a specific meeting to receive proposals for the purchase of the Property, however, given the request to strike language in Education Code section 17466 above, the requirement to publish notice would no longer apply.

## 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 meeting 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 accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

***Rationale:*** The purpose of this request is to allow the District to waive the sealed proposal requirement of Education Code sections 17466 et seq. and directly negotiate with interested purchasers. The District has previously provided notice to the former owner. The deleted language indicates 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 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 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 purpose of this request is to allow the District to waive the sealed proposal requirement of Education Code sections 17466 et seq. and directly negotiate with interested purchasers for the Property. The bracketed language in Section 17472 requires the District to obtain sealed bids and select the highest bid. The District is seeking a waiver to directly negotiate with interested purchasers to meet the needs of the District.

## 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 purpose of this request is to allow the District to waive the sealed proposal requirement of the Education Code sections 17466 and directly negotiate with interested purchasers for the Property. The bracketed language in Section 17473 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 haring but instead will negotiate with interested parties. Thus, the District will not need or accept 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 purpose of this request is to allow the District to waive the sealed proposal requirement of the Education Code sections 17466 et seq. and directly negotiate with interested purchasers for the Property. The bracketed language in Section 17474 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 negotiate directly with interested parties.

## 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:*** The purpose of this request is to allow the District to waive the sealed bid proposal requirement of the Education Code and directly negotiate with interested purchasers for the Property. Modification of Section 17475 would remove the requirement that the Board accept a proposal at the same meeting where it was received, and would instead allow the Board to directly negotiate with interested purchasers. The sale of the Property would be approved by the Board.

# Attachment 4: 31-12-2017 Covina-Valley Unified School District

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1964436

Waiver Number: 31-12-2017

Active Year: 2017

Date In: 12/19/2017 3:25:08 PM

Local Education Agency: Covina-Valley Unified School District

Address: 519 East Badillo St.

Covina, CA 91723

Start: 12/18/2017

End: 12/17/2019

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, 17473, 17475, 17486, 17488, 17489, 17491(c), 17495, 17498

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *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 or lease of the Property “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 lease 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, 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: This section presumes a sale or lease will proceed via a competitive bidding process. As noted, the District has already received a proposal from a developer for the Property, there is no interest by the City in maintaining ownership of the acreage, and a feasibility review is underway to determine whether the Property is appropriate for the developer’s proposed use. Pending the outcome of the feasibility review, the District wishes to engage in negotiations with the proposed developer to reach the best outcome for the District.

Accordingly, the District seeks to waive this section in its entirety as its requirements to establish a minimum price, and fix a time for a public meeting at which sealed proposals will be received assume a competitive selection process, and the remaining requirements, to adopt a resolution declaring its intent to sell or lease the property are the vehicle through which the minimum requirements for the competitive selection are established and thus are not applicable here.

*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: This section revolves around the assumption that that the District’s Governing Board will be setting a specific meeting to receive proposals for the lease of the Property. Such a requirement, however, will be removed pursuant to the waiver of *Education Code* Section 17466 and thus this section will not be applicable.

*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 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: This section presumes that the District will receive proposals for the Property and that a sale or lease will proceed via a competitive bidding process. As noted, the District has already received a proposal from a developer for the Property that is uniquely well suited to the Property and provides a significant benefit to students through shared use, the City already gave up the Property to District evidencing lack of interest in owning/controlling the site, and a feasibility review is underway to determine whether the Property is appropriate for the developer’s proposed use. Pending the outcome of the feasibility review, the District wishes to engage in negotiations with the proposed developer to reach the best deal for the District.

Accordingly, the District seeks to waive this section in its entirety as it contemplates a competitive selection process (i.e. sealed proposals and the acceptance of the highest bidder), and governs the receipt of proposals, which has already transpired here.

*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 lease the Property, 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: This section presumes a sale or lease will proceed via a competitive bidding process. As noted, the District has already received a proposal from a developer for the Property, there is no other interest in the Property, and a feasibility review is underway to determine whether the Property is appropriate for the developer’s proposed use. Pending the outcome of the due diligence review, the District wishes to engage in negotiations with the proposed developer to reach the best deal for the District.

Accordingly, the District seeks to waive this section in its entirety as its requirements governing final acceptance, of presumably a bid or proposal, assume a competitive selection process.

*Education Code* § 17486

[This article shall apply to any schoolsite owned by a school district, which the governing board determines to sell or lease, and with respect to which the following conditions exist:

(a)Either the whole or a portion of the schoolsite consists of land which is used for school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes.

(b)The land described in subdivision (a) has been used for one or more of the purposes specified therein for at least eight years immediately preceding the date of the governing board’s determination to sell or lease the schoolsite.

(c)No other available publicly owned land in the vicinity of the schoolsite is adequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes, as determined by the governing body of the public agency which proposes to purchase or lease land from the school district, pursuant to Section 17492.]

Rationale: In its current condition the Property does not enhance the recreational value of the land or maximize recreational opportunities for either the school or the community. It is former parkland of the City of Covina, currently unimproved open space situated directly adjacent to the Cory Lidle Baseball Little League fields operated by the Cory Lidle Foundation, Inc., and in its current condition creates a safety and security concern for the adjacent Barranca Elementary School and surrounding neighborhood by attracting crime, substance abuse, and the congregation of homeless individuals day and night.

The District has received a proposal from a developer for the surplus property which, if accepted, would develop the Property into a soccer center or other similar type of project to be used by, and provide recreational opportunities to, the adjacent Barranca Elementary School and the community.

Accordingly, the intent behind the statutory scheme within which *Education Code* section 17486 is located, to keep property available for playground, playing field or other outdoor recreational and open-space purposes is satisfied and compliance with this section could actually derail that effort. Thus, the District seeks to waive this section in its entirety as it is not necessary here.

*Education Code* § 17488

[The governing board of any school district may sell or lease any schoolsite containing land described in Section 17486, and, if the governing board decides to sell or lease such land, it shall do so in accordance with the provisions of this article.]

Rationale: The language indicating that the sale or lease of the school site be done “in accordance with the provisions of this article” is to be waived since the District is asking that several provisions of the article be waived and consequently, the lease will not be made in the manner provided in Article 5.

*Education Code* § 17489

[(a)

(1)Other than as specified in paragraph (2), and notwithstanding Section 54222 of the Government Code, the governing board of a school district, before selling or leasing a schoolsite containing land described in Section 17486, excluding that portion of a schoolsite retained by the governing board of the school district pursuant to Section 17490, shall, if a charter school has not accepted an offer to purchase or lease the schoolsite pursuant to Section 17457.5, first offer to sell or lease that portion of the schoolsite consisting of land described in Section 17486, excluding that portion retained by the governing board of the school district pursuant to Section 17490, to the following public agencies in accordance with the following priorities:

(A)First, to any city within which the land may be situated.

(B)Second, to any park or recreation district within which the land may be situated.

(C)Third, to any regional park authority having jurisdiction within the area in which the land is situated.

(D)Fourth, to any county within which the land may be situated.

(2)The governing board of a school district, before selling or leasing a schoolsite to which paragraph (1) would otherwise apply, but which was purchased with or modernized with, or on which improvements were constructed that were funded with, any moneys from a state school facilities funding program, and to which subdivision (a) of Section 17462.3 is applicable, after first offering the schoolsite for sale or lease to a charter school that has requested notification pursuant to Section 17457.5, may offer to sell or lease the property to another school district, a county office of education, or a governmental entity that provides child care and development services pursuant to Section 17458 before offering to sell or lease the property to the entities listed in subparagraphs (A) to (D), inclusive, of paragraph (1).

(b)The governing board of the school district shall have discretion to determine whether the offer shall be an offer to sell or an offer to lease.

(c)An entity which proposes to purchase or lease a schoolsite offered by a school district shall notify the school district of its intention, in writing, within 60 days after receiving written notification from the school district of its offer to sell or lease.]

Rationale: In its current condition the Property does not enhance the recreational value of the land or maximize recreational opportunities for either the school or the community. It is former parkland of the City of Covina, currently unimproved open space situated directly adjacent to the Cory Lidle Baseball Little League fields operated by the Cory Lidle Foundation, Inc., and in its current condition creates a safety and security concern for the adjacent Barranca Elementary School and surrounding neighborhood by attracting crime, substance abuse, and the congregation of homeless individuals day and night.

The District has received a proposal from a developer for the surplus property which, if accepted, would develop the Property into a soccer center or other similar type of project to be used by, and provide recreational opportunities to, the adjacent Barranca Elementary School and the community.

Accordingly, the intent behind the statutory scheme within which *Education Code* section 17489 is located, to keep property available for playground, playing field or other outdoor recreational and open-space purposes is satisfied and compliance with this section could actually derail that effort. Thus, the District seeks to waive this section in its entirety as it is not necessary here.

*Education Code* § 17491

(a) Except as otherwise provided in subdivision (b) or (e), the price at which land described in Section 17486, excluding that portion of a schoolsite retained by the governing board pursuant to Section 17490, is sold pursuant to this article shall not exceed the school district’s cost of acquisition, calculated as a pro rata cost of acquiring the entire parcel comprising the schoolsite, adjusted by a factor equivalent to the percentage increase or decrease in the cost of living from the date of purchase to the year in which the offer of sale is made, plus the cost of any improvement to the recreational and open-space portion of the land which the school district has made since its acquisition of the land. In no event shall the price be less than 25 percent of the fair market value of the land described in Section 17486 or less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property, excluding that portion of a schoolsite retained by the governing board pursuant to Section 17489, at the time of the offer.

These provisions shall apply to land that the school district acquired by gift or for consideration.

(b) A school district that offers a portion of a schoolsite for sale may offer such portion of property for sale at its fair market value, provided the school district offers an equivalent size alternative portion of that schoolsite for school playground, playing field, or other recreational and open-space purposes.

[(c) Land which is leased pursuant to this article shall be leased at an annual rate of not more than 1/20th of the maximum sales price determined pursuant to subdivision (a) of this section, adjusted annually by a factor equivalent to the percentage increase or decrease in the cost of living for the immediately preceding year.]

(d) The percentage of annual increase or decrease in the cost of living shall be the amount shown for January 1st of the appropriate year by the then current Bureau of Labor Statistics Consumers Price Index for the area in which the schoolsite is located.

(e) Whenever a school district closes a schoolsite and sells any land described in Section 17486 pursuant to this article to help pay only for capital outlay costs incurred directly as a result of the transfer of pupils from the closed school to another school or other schools of the district, the sale price of the property determined pursuant to subdivision (a) shall be increased by an amount equal to the additional costs incurred due to the school closure.

Rationale: The District is asking that several portions of this article be waived, most of which require, or stem from the requirement that, the District to offer the Property to specified public entities. Subdivision (c) of *Education Code* section 17491 imposes a maximum amount at which the Property may be leased, which is relevant when the leasing party is another public entity, as contemplated by Article 5. Here, however, the District is seeking a waiver of this article’s requirement to offer the property to certain public entities, and has received a proposal from a private developer that is consistent with the legislature’s interest in ensuring that recreational and open space remains as such, available for community use and benefit. Accordingly, there is no other public entity in the contemplated transaction that requires the price protection afforded by subdivision (c) and the District seeks a waiver of subdivision (c) so it can maximize the proceeds from the lease with a private entity.

*Education Code* § 17495

[The sale or lease of land by a school district pursuant to this article shall be subject to, and governed by, the provisions of Article 2 (commencing with Section 17230) of Chapter 1 and Article 4 (commencing with Section 17455), except to the extent that the provisions of this article are inconsistent with a provision or provisions of Article 2 or 4, in which event the provisions of this article shall govern the sale or lease.]

Rationale: The District is requesting a waiver of specified provisions of Article 4, commencing with *Education Code* Section 17455. If granted, then then statutory scheme set forth in Article 4 will not apply in its entirety, resulting in the sale not being made in the manner provided in Article 4, rendering this section incompatible. Thus, to ensure consistency and avoid confusion, the District requests the waiver of this section in its entirety.

*Education Code* § 17498

[A school district having a schoolsite described in Section 17486 may, as an alternative to sale or lease of the land pursuant to the foregoing provisions of this article, enter into other forms of agreement concerning the disposition of the property with any entity enumerated in Section 17489, in accordance with the priorities therein specified, including, but not limited to each of the following:

(a)An agreement to lease to such entity all or part of the schoolsite for a specified term, with an option to purchase such properties at the end of the term.

(b)An agreement granting to the entity a permanent open-space easement for recreational use over a portion of the leased site.

(c)If the lessee or a grantee under an agreement is an entity having zoning powers, an agreement requiring the entity to rezone any portion of the property retained by the school district in accordance with conditions specified in the agreement, to the extent that rezoning in accordance with the conditions is in compliance with applicable laws of the state.]

Rationale: In its current condition the Property does not enhance the recreational value of the land or maximize recreational opportunities for either the school or the community. It is former parkland of the City of Covina, currently unimproved open space situated directly adjacent to the Cory Lidle Baseball Little League fields operated by the Cory Lidle Foundation, Inc., and in its current condition creates a safety and security concern for the adjacent Barranca Elementary School and surrounding neighborhood by attracting crime, substance abuse, and the congregation of homeless individuals day and night.

The District has received a proposal from a developer for the surplus property which, if accepted, would develop the Property into a soccer center or other similar type of project to be used by, and provide recreational opportunities to, the adjacent Barranca Elementary School and the community.

Accordingly, the intent behind the statutory scheme within which *Education Code* section 17498 is located, to keep property available for playground, playing field or other outdoor recreational and open-space purposes is satisfied and compliance with this section could actually derail that effort. Thus, the District seeks to waive this section in its entirety as it is not necessary here.

Outcome Rationale: The Covina Valley Unified School District (“District”) owns approximately three acres of open space land (“Property”) adjacent to Barranca Elementary School (“School”), which is located at 727 S. Barranca Avenue, in the City of Covina, County of Los Angeles. The Property is former parkland of the City of Covina (“City”), and is currently unimproved open space situated directly adjacent to the Cory Lidle Baseball Little League fields operated by the Cory Lidle Foundation, Inc. In its current condition, the Property does not enhance the value of the land or maximize the recreational opportunities for the School, and instead creates a safety and security concern for the School and community by attracting coyotes, crime, substance abuse, and the congregation of homeless individuals day and night.

The District has received an unsolicited proposal from a developer for the Property and a feasibility review is currently underway to determine whether the Property is appropriate for the developer’s proposed use. Given the Property’s unique features, its prior history as an unimproved City park, its current condition creating a security and safety problem for the School, the District does not anticipate that a competitive selection process will result in a better outcome for the District.

Thus, pursuant to *Education Code* section 33050 et seq., the District is requesting that specific portions of the *Education Code* relating to the lease of surplus property be waived. Specifically, the District seeks to waive the competitive selection requirements in *Education Code* section 17455 et seq., including the requirement for sealed proposals, and an oral bidding process; and the requirements that the Property be offered to certain agencies in *Education Code* sections 17486 et seq., so it can directly negotiate with the unsolicited proposer to maximize the proceeds from the lease.

Student Population: 11910

City Type: Suburban

Public Hearing Date: 12/18/2017

Public Hearing Advertised: Published in the San Gabriel Valley Tribune; posted at the Dr. Mary Hanes Board Room and Professional Development Center, on the District's website, and at the District Office

Local Board Approval Date: 12/18/2017

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

Community Council Reviewed Date: 12/1/2017

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Deepika Saluja

Position: Attorney

E-mail: dsaluja@dwkesq.com

Telephone: 562-366-8500 x8513

Bargaining Unit Date: 11/13/2017

Name: California School Employees Association

Representative: Vivan Garcia

Title: President

Position: Support

Bargaining Unit Date: 11/13/2017

Name: Covina Unified Education Association

Representative: Sita Rampershad

Title: President

Position: Support

Bargaining Unit Date: 11/13/2017

Name: Covina-Valley Association of School Psychologists

Representative: Martha EngleTitle: President

Position: Neutral

# Attachment 5: 21-11-2017 Hughson Unified School District

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 5075549

Waiver Number: 21-11-2017

Active Year: 2017

Date In: 11/15/2017 2:10:51 PM

Local Education Agency: Hughson Unified School District

Address: 6815 Hughson Ave.

Hughson, CA 95326

Start: 1/1/2018

End: 12/31/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 33050-33053

Ed Code Authority: 33050-33053

Ed Code or *CCR* to Waive: See attachment A.

Outcome Rationale: Desired Outcome/ Rationale

The Hughson Unified School District desires to have the requested *Education Code* sections waived because the waiver of these sections will allow the District to maximize its return on the sale of the Property to the greatest extent possible. The District anticipates that the location and certain qualities of the Property will make it extremely attractive to developers; however, the District’s past experience with a public auction indicates that such a process will not allow the District to take advantage of the potential of the Property. Thus, the District would like to sell the Property via a Request for Proposals.

The Property

The District owns Approximately 25.00 acres of land located on the corner of 7th street & Whitmore Avenue (knows as the Camagna Property) Hughson, California 95316, known generally as Stanislaus County APN’s 018-052-007, 027, 037 and Portions of APN’s 081-052-008 and 036 (“Property”);

Previous Bid Auctions

On May 13, 2014 the District adopted and approved a resolution approving the District’s Advisory Committee’s recommendations to sell the Property, declaring it surplus, and authorizing the offer of the Property for sale pursuant to California law. The District offered a portion of the Property for sale to public agencies pursuant to the surplus property procedures set forth in *Education Code* sections 17464-17465 and 17485 et seq. and to public benefit non-profit organizations pursuant to *Education Code* section 17464.

After concluding all required negotiation and notice periods with applicable agencies and organizations (and receiving no offers to negotiate or interest from any of the agencies or organizations), completing title analyses, complying with posting and publication requirements, and preparing and disseminating extensive bid package documents, the District conducted a public bid hearing for the sale of the Property on June, 13, 2017. Despite sending a bid package, an addendum and contacting potential bidders, no written or oral bids were submitted. The public bid procedure did not attract any interest in the entire Hughson School site.

Therefore, despite good faith efforts, the District was not able to dispose of the Property under the surplus property bid procedures set forth in *Education Code* section 17466 et seq.

Subsequently, the District’s Board of Trustees adopted a resolution requesting a waiver of the competitive bidding procedures required under the *Education Code* and further requesting permission to issue an RFP for the sale of all, or a portion, of the Property.

Proposed Process for Selling the Property

Based on previous experience, consultations with experts, and on its knowledge of the surrounding community, the District has concluded that offering the Property for sale through a licensed real estate agent and potentially through a Request for Proposals, followed by further negotiations, will allow more flexibility and produce a better outcome.

In the current real estate market climate, a bid auction scenario is not able to attract serious and capable buyers to this Property. The District’s previous experience with a lack of interest from bidders has shown the District that it needs the ability to be flexible and work with potential buyers to create a valuable package. A waiver from the surplus property bid auction requirements will allow the District to do this. The District will work with a broker to develop a strategic plan for advertising and marketing the Property in order to solicit proposals from potential buyers interested in the Property.

Conclusion

The sale of the Property will allow the District to continue to provide a high-quality educational experience for its students. The District will work closely with consultants to ensure that the process by which the Property is sold is fair, open and competitive. As indicated above, such a process will produce a better result than a second attempt at a bid auction for both the District and the community.

Student Population: 1996

City Type: Rural

Public Hearing Date: 11/14/2017

Public Hearing Advertised: local newspaper (Modesto Bee 11/2/2017), all school sites, district office, district website, local library, post office and business (Hamilton's)

Local Board Approval Date: 11/14/2017

Community Council Reviewed By: All school site councils (7/21/2017 - 10/24/2017)

Community Council Reviewed Date: 10/24/2017

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jody Jorge

Position: Executive Assistant to the Superintendent

E-mail: jjorge@hughson.k12.ca.us

Telephone: 209-883-4428 x4

Fax: 209-883-4639

Bargaining Unit Date: 07/21/2017

Name: California School Employees Association (CSEA

Representative: Randy Robinson

Title: President

Position: Neutral

Bargaining Unit Date: 07/21/2017

Name: Hughson Educators Association (HEA)

Representative: Jeff Clayton

Title: President

Position: Support

## Attachment A

The Hughson Unified School District desires to waive the following sections and portions of the Education Code lined out below:

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].

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 the Board determines represents the most desirable sale of the property shall be [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 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 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 17475. The final acceptance by the governing body may be made [either at the same session or] at any adjourned session or the same meeting held within 30 to 60 days [next] following.

# Attachment 6: 18-12-2017 South Pasadena Unified School District

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1965029

Waiver Number: 18-12-2017

Active Year: 2017

Date In: 12/14/2017 7:39:03 PM

Local Education Agency: South Pasadena Unified

Address: 1020 El Centro St.

South Pasadena, CA 91030

Start: 12/14/2017

End: 12/14/2018

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, 17473, 17474, 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: The South Pasadena 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].

*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 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 or sale of the Property. Specifically, the District desires to sell or 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 sale or lease agreement that provides the most benefit to the District. 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 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 sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease or sale agreement that provides the most benefit to the District. The deleted language indicates the District will 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 or 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 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 sale of the Property. Specifically, the District desires to sell the Property via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into a lease or sale agreement that provides the most benefit to the District. The deleted language indicates 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 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 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 sale or lease the Property. Specifically, the District desires to sell or 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 a sale or lease agreement that provides the most benefit to the District. 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 SECTION [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 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 sale or lease of the Property. Specifically, the District desires to sell or 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 a lease agreement that provides the most benefit to the District. 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 SECTION [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 purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the sale or lease of the Property. Specifically, the District desires to sell or 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 a sale or lease agreement that provides the most benefit to the District. 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 purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the Property. Specifically, the District desires to sell or 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 an agreement that provides the most benefit to the District. 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: The District owns approximately 3 acres of property located at 1020 El Centro St., South Pasadena, California 91030 commonly referred to as the District office (“Property”). The District’s governing Board declared the Property surplus because it no longer uses or needs the Property. The District determined that it is comfortable with either leasing or selling the Property, depending on which will provide the District the most benefit. *Education Code* section 17466 et seq. requires school districts either selling or leasing property to conduct a formal bid hearing process in which the school district solicits bids and then enters into a lease or sale 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 either a sale or lease. This RFP process will allow the District to receive offers to both purchase or 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 either a sale or 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 sale or lease is in the best interest of the District and establish the terms of either 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 either the purchase or lease of the Property and develop a process by which the Property is leased or sold is fair and open.

Student Population: 4794

City Type: Urban

Public Hearing Date: 10/10/2017

Public Hearing Advertised: Notice was posted at the District Office per the Brown Act and posted on the District's website

Local Board Approval Date: 10/10/2017

Community Council Reviewed By: District Board of Education

Community Council Reviewed Date: 10/10/2017

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney for District

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Bargaining Unit Date: 10/03/2017

Name: California School Employees Association Chapter 17

Representative: Steven Reyes

Title: President

Position: Support

Bargaining Unit Date: 10/18/2017

Name: Teachers Association South Pasadena

Representative: Estela Morales

Title: President

Position: Support