

California Department of Education

Executive Office

SBE-005 (REV. 11/2017)

General Waiver

# California State Board of Education March 2018 Agenda Item #W-09

## Subject

Request by **Pasadena 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

4-12-2017

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Pasadena 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 schools and community.

## Authority for Waiver

*Education Code (EC)* Section 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 Pasadena Unified School District board 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 lease of surplus property be waived.

The Pasadena Unified School District requests that the specified *EC* sections be waived in order to allow the District to lease 20,044 square feet of the existing 40,113 square feet of building space at the property located at 2046 Allen Avenue, Altadena, CA, known as the former Burbank Elementary School site in a manner that best serves their schools and community. 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 lease of the property with the Request for Proposals process will allow the District to continue to provide a high-quality educational experience for its students and will help ensure that the District is able to find a compatible tenant, since special education services will still be operating on a portion of the site. The District will work closely with legal counsel to ensure that the process by which the property is leased is fair and open.

The United Teachers of Pasadena (UTP) did register their opposition to this waiver request, however they did not speak at the local board meeting where this waiver request was discussed and authorized. The UTP feels the Pasadena Unified School District should sell or rent the property to highest bidder, which would not require a waiver.

**Demographic Information:**

The Pasadena Unified School District has a student population of 16,892 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 district is 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 Pasadena Unified School District to maximize revenue from the lease of the property.

This site has 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 (1 page)
* **Attachment 2:** Pasadena Unified School District 4-12-2017 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

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

| **Waiver Number** | **School District** | **Property** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit, Representatives Consulted, Date, and Position** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 4-12-2017 | Pasadena Unified | 20,044 square feet of building space on approximately 2 acres located at 2046 Allen Avenue, Altadena, CA 91001, known as the former  Burbank Elementary School site | **Requested:**  December 5, 2017 to  December 5, 2018  **Recommended:**  March 15, 2018  to  December 5, 2018 | 11/16/2017 | 11/16/2017  Public Hearing Advertised:  Posted at the District's office where board meeting notice is  posted, the District's website, and the property | United Teachers of Pasadena  Alvin Nash, President  10/17/2017  **Oppose**  Opposition registered by e-mail, no statement at the 11/16/2017 public hearing. | District Surplus Property Advisory Committee  7/11/2017 |

Created by the California Department of Education

December 27, 2017

**Attachment 2: Waiver 4-12-2017 Pasadena Unified School District**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1964881

Waiver Number: 4-12-2017

Active Year: 2017

Date In: 12/4/2017 7:15:45 PM

Local Education Agency: Pasadena Unified School District

Address: 351 South Hudson Ave.

Pasadena, CA 91101

Start: 12/5/2017

End: 12/5/2018

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 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 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 ofthe 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: The District owns approximately 20,044 square feet of real property, located at 2046 Allen Avenue, Altadena, CA 91001, known as the former Burbank Elementary School site (“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. This RFP process will allow the District to maximize its return on the lease 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 potential lessees through the RFP process.

In the current real estate market climate, a bid auction scenario is unlikely to attract serious and capable lessees to this Property. The District needs the ability to be flexible and work with potential lessees to create a valuable package. 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 lease of the Property with the RFP process will allow the District to continue to provide a high-quality educational experience for its students. The District will work closely with legal counsel to ensure that the process by which the Property is leased is fair and open. As indicated above, such a process will produce a better result than a bid auction for both the District and the community.

Student Population: 16892

City Type: Urban

Public Hearing Date: 11/16/2017

Public Hearing Advertised: Posted at the District's office where board meeting notice is posted, the District's website, and the Property.

Local Board Approval Date: 11/16/2017

Community Council Reviewed By: District Surplus Property Advisory Committee

Community Council Reviewed Date: 7/11/2017

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](mailto:smcloughlin@aalrr.com)

Telephone: 562-653-3821

Bargaining Unit Date: 10/17/2017

Name: United Teachers of Pasadena

Representative: Alvin Nash

Title: President

Position: Oppose

Comments: Email response:"UTP objects with respect to the waiver regarding the Burbank Elementary School Site