

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education November 2018 AgendaItem #W-05

## Subject

Request by two local educational agencies to waive California *Education Code (EC)* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Ojai Unified School District 2-7-2018
* Pomona Unified School District 3-8-2018

## Type of Action

Action, Consent

## Summary of the Issues

The Ojai Unified School District is requesting to waive all of California *EC* sections 17473 and 17474, and portions of 17455, 17466, 17472, and 17475, which will allow the district to lease one piece of property through the Request for Proposal (RFP) process, maximizing the benefit from the lease.

The Pomona Unified School District is requesting to waive all of California *EC* sections 17473 and 17474, and portions of 17455, 17466, 17468, 17469, 17470, 17472, and 17475, which will allow the district to maximize the return on the sale or lease of one piece of property through the RFP process.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

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

The California Department of Education recommends approval with the following conditions: that the proposals the Ojai and Pomona Unified School Districts’ governing boards determine to be most desirable shall be made within 60 days of their respective public meetings when the proposals are received, and that the reasons for those determinations be discussed in public sessions 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 sale or lease of surplus property be waived.

**Ojai Unified School District**

The Ojai Unified School District is requesting that the requirement of sealed proposals and the oral bidding process be waived, allowing the district to negotiate a lease with a highly qualified lessee selected by an RFP process, thereby maximizing benefits to the district.

The district desires to lease one piece of real property known as the Administrative Office/Chaparral High School site. The district acquired a portion of the 7.54 acres, located at 414 E. Ojai Avenue, Ojai, CA, in 1895 and an additional parcel in 1937. The district board determined on October 17, 2016, that the property is not needed for administrative or school purposes. In recent years (2012 and 2016), two district advisory committees (i.e., 7–11 Committees) have been convened to analyze the district’s facilities needs and both committees concluded that this property should be declared surplus and monetized for the benefit of the district.

The property is currently being used for administrative and school purposes, and when a proposal is submitted that meets the district’s needs and is supported by the community, planning commission, and city council, the current programs will be moved off-site. The 7–11 Committees determined that, due to a substantial decline in enrollment, there was significant excess capacity at the other seven school sites within the district to accommodate the current programs located at 414 E. Ojai Avenue, Ojai, CA.

The district has acted in accordance with *EC* Section 17464 and *Government Code (GC)* Section 54222 regarding offers of surplus properties to specified public entities. The district is now seeking the ability to negotiate the lease of the surplus property with suitable lessees, utilizing the RFP process.

**Pomona Unified School District**

The Pomona Unified School District is requesting that the requirement of sealed proposals and the oral bidding process be waived, allowing the district to negotiate the sale and/or lease with a suitable purchaser/developer/lessee using the RFP process, thereby maximizing the return on the property.

The district desires to sell and/or lease approximately 5.90 acres of excess real property known as the Garey Village Ninth Grade Campus Property, located at S. Garey Avenue and County Road in Pomona, CA. This site has been used in the past for intermittent school space and adult education classes, but is no longer used or needed for school purposes. A portion of this property was acquired in 1999 and the additional parcel in 2007. This property was declared surplus by the Real Property Advisory 7–11 Commission in 2012 and subsequently the district board determined that the property was not needed for school purposes. On June 26, 2018, the district board adopted a resolution declaring its intent to sell and/or lease the property.

The district has acted in accordance with *EC* Section 17464 and *GC* Section 54222 regarding offers of the surplus property to specified public entities and additionally does not believe that again attempting to follow the competitive bidding process will be effective. The district is now seeking the ability to negotiate the sale and/or lease of the surplus property with a suitable purchaser/developer/lessee utilizing the RFP process allowing for the reallocation of resources from the oversight and maintenance of this property towards student facilities and programs.

## Demographic Information

The Ojai Unified School District has a student population of 2,446 and is located in an urban area of Ventura County.

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

**Because this is a general waiver, if the State Board of Education (SBE) decides to deny the waiver, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information web page at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

## Summary of Previous State Board of Education Discussion and Action

The SBE has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The districts are requesting to waive the same or similar provisions for the sale or lease of surplus property.

## Fiscal Analysis (as appropriate)

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

These sites have been owned for more than 10 years and therehave been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursementis not due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:**  Ojai Unified School District General Waiver Request 2-7-2018
(4 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:**  Pomona Unified School District General Waiver Request
3-8-2018 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)

**Attachment 1: Summary Table**

California *EC* Section 17466 et seq.

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board and Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- |
| 2-7-2018  | Ojai Unified School District | 414 E. Ojai Avenue, known as the Administrative Office/Chaparral High School site | **Requested:**July 6, 2018 to July 6, 2020**Recommended:**November 9, 2018 to July 6, 2020 | Local Board Approval Date: 5/9/2018Public Hearing Date: 5/9/2018Public Hearing Advertised: Printed in the Ventura County Star and posted at all school sites and on the district’s website | California School Employees Association Chapter 33Chuck Crawford, President1/29/2018**Support**Ojai Federation of TeachersAngie Genasci, President11/14/2017**Support** | District Surplus Property Advisory Committee5/17/2016**No Objections** |
| 3-8-2018  | Pomona Unified School District | Garey Village Ninth Grade Campus Property, South Garey Avenue. and County Road | **Requested:**August 1, 2018 to July 31, 2020**Recommended:**November 9, 2018 to July 31, 2020 | Local Board Approval Date: 6/26/2018Public Hearing Date: 6/26/2018Public Hearing Advertised: Posted on the district's website, printed in local newspaper, and posted on public locations within the jurisdiction. | Associated Pomona Teachers (APT)Dorothy Kim-Perez,APT President6/26/2018**Support**California Service Employees AssociationMariana Orozco, Chapter President6/26/2018**Support** | Superintendent's Advisory Board6/26/2018**No Objections** |

Created by the California Department of Education

September 12, 2018

# Attachment 2: **Ojai Unified School District General** **Waiver Request 2-7-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 5672520

Waiver Number: 2-7-2018

Active Year: 2018

Date In: 7/5/2018 6:50:21 PM

Local Education Agency: Ojai Unified

Address: 414 East Ojai Ave.

Seal Beach, CA 90740

Start: 7/6/2018

End: 7/6/2020

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 Ojai 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.]

*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].

*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.]

*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.]

*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].

Outcome Rationale: The District owns approximately 7.54 acres of real property located at 414 E. Ojai Avenue, Ojai, CA commonly referred to as the known as the District's Administrative Office/Chaparral High School Property ("Property"). The District's governing Board declared the Property surplus because it no longer uses or needs the Property. After complying with the surplus property procedure required by the *Education Code,* the District decided to explore leasing the Property. *Education Code* section 17466 et seq. 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 with the winning bidder based on the total price (i.e. lease payments) offered by the bidders.

The District seeks a waiver of certain portions of the procedure set forth in *Education Code* section 17466 et seq. so it can pursue a lease of the Property. This RFP processwill allow the District to receive offers to lease the Property and then determine whichproposer offers the best terms and conditions for the District. For example, the Districtcan consider the length of the lease term offered, the proposed use of the Property, andother benefits that the proposer may offer in exchange for a lease.

The bid auction scenario requires the District to solicit bids for the lease of the Property through an auction process that limits the District's selection to the highest bidder or reject all bids. The District needs the ability to be flexible and work with interested parties to establish the specific terms of the lease that will provide the most benefit to the District. 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. Specifically, the District will develop an RFP document that describes the Property in detail and asks interested parties to submit proposals with its proposed terms and conditions of the lease, including price.

Student Population: 2446

City Type: Urban

Public Hearing Date: 5/9/2018

Public Hearing Advertised: Advertised in the Ventura County Star and posted at all school sites and the District’s website

Local Board Approval Date: 5/9/2018

Community Council Reviewed By: District Surplus Property Advisory Committee

Community Council Reviewed Date: 5/17/2016

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: stmcloughlin88@hotmail.com

Telephone: 562-519-7573

Bargaining Unit Date: 01/29/2018

Name: California School Employees Association Chapter 33

Representative: Chuck Crawford

Title: President

Position: Support

Bargaining Unit Date: 11/14/2017

Name: Ojai Federation of Teachers

Representative: Angie Genasci

Title: President

Position: Support

# Attachment 3: Pomona Unified School District General Waiver Request 3-8-2018

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1964907

Waiver Number: 3-8-2018

Active Year: 2018

Date In: 8/10/2018 11:59:53 AM

Local Education Agency: Pomona Unified School District

Address: 800 South Garey Ave.

Pomona, CA 92408

Start: 8/1/2018

End: 7/31/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

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

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Pomona 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* 14755.The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district, [and shall be made in the manner provided by this article.]

Rationale: The language indicating that the sale of the property is to be made in the manner provided by this article is to be waived since the District is asking that several provisions of the article be waived and consequently, the sale will not be made in the manner provided in Article 4.

*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, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.]

Rationale: The stricken language to be waived provides for the governing board to establish a minimum price and receive sealed proposals for the purchase of the property at an identified meeting of the District's governing board. The District is requesting that the requirement of scaled proposals to purchase and property be waived, allowing the District to negotiate the sale of the surplus properties with interested purchasers. As the District cannot predict in advance the timing of negotiations with interested purchasers, it cannot at the time of adopting the resolution contemplated by this Section 17466 know when proposals must be brought back to the governing board for consideration. The District intends to develop a strategic plan for advertising and marketing the property in order to solicit proposal from not only the prospective purchasers/developers who attended the District's Pre-Bid meetings, but also other potential purchasers in the development community. The proposals will be brought to the governing board when necessary to consider the approval of a sale.

*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 stricken language to be waived provides for the District to receive sealed proposals and oral bids to purchase the property at an identified meeting of the District's governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to negotiate the sale of the surplus properties with interested purchasers.

*EC* 17469. Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district, [not less than 15 days before the date of the meeting,] and by publishing the notice not less than once a week for three successive weeks [before the meeting] in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein.

Rationale: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase of the surplus properties. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* section 17466. As modified, the District would still be required to provide notice of its adoption of a resolution of intent to sell the property, but the posting of that resolution and notice in a newspaper would no longer be tied to an established date to receive proposals.

*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 hearing 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 highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase of the surplus properties. Such a requirement, however, will be removed pursuant to the language stricken with in *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 lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless [a higher oral bid is accepted or] the board rejects all bids.

Rationale: The stricken language to be waived provides for the District to receive and open sealed proposals and oral bids to purchase the property at an identified meeting of the District's governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to negotiate the sale of the Garey Village Ninth Grade Campus Property with an interested purchaser.

*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.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell the surplus property, will not be accepting oral bids.

*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.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell the surplus property, will not be accepting 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: Modification of the section would remove the requirement that the governing board accept a proposal at the same meeting received, and would instead allow the governing board to consider proposals received and, as desired and appropriate, direct further negotiation.

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

On June 26, 2018, the Board of Education for the Pomona Unified School District adopted a Resolution declaring its intent to sell and/or lease the surplus property, pending approval of this waiver. The District does not believe that again attempting to follow the above-referenced competitive bidding process will be effective and desires to secure a waiver to provide the District with the greatest flexibility to enable the District to negotiate a satisfactory sale and/or lease agreement.

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

Student Population: 23741

City Type: Suburban

Public Hearing Date: 6/26/2018

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

Local Board Approval Date: 6/26/2018

Community Council Reviewed By: Superintendent's Advisory Board

Community Council Reviewed Date: 6/26/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stanley Stringfellow

Position: General Counsel

E-mail: sstringfellow@mohlaw.com

Telephone: 909-890-9500

Bargaining Unit Date: 06/26/2018

Name: Associated Pomona Teachers

Representative: Dorothy Kim-Perez

Title: APT President

Position: Support

Bargaining Unit Date: 06/26/2018

Name: California Service Employees Association

Representative: Mariana Orozco

Title: Chapter President

Position:Support