

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2018 Agenda Item #W-04

## Subject

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

## Waiver Numbers

* Fountain Valley Elementary School District**:** 18-5-2018
* Lake Elsinore Unified School District: 24-5-2018
* Orcutt Union Elementary School District: 3-6-2018
* San Bruno Park Elementary School District: 16-5-2018

## Type of Action

Action, Consent

## Summary of the Issues

The Fountain Valley Elementary School District is requesting a waiver of California *EC* 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.

The Lake Elsinore Unified School District is requesting a waiver of California *EC* 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 of the site in a manner that best serves their schools and community.

The Orcutt Union Elementary School District is requesting a waiver of California *EC* sections 17473 and 17474, and portions of 17455, 17466, 17468, 17469, 17472, 17475, 17476, and 17478, 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 San Bruno Park Elementary School District is requesting a waiver of California *EC* sections 17473 and 17474, and portions of 17455, 17466, 17469, 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

California *EC* sections 33050-33053

## Recommendation

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

The California Department of Education (CDE) recommends approval with the following conditions: that the final acceptance by the governing boards of the Fountain Valley Elementary, Lake Elsinore Unified, Orcutt Union Elementary, and San Bruno Park Elementary 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 sale or lease of surplus property be waived.

### Fountain Valley Elementary School District

The Fountain Valley Elementary School District requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale or lease of the property located at 9790 Finch Avenue, Fountain Valley, CA 92708, known as the Fred Moiola 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 district will also work closely with legal counsel to develop a Request for Proposal (RFP) seeking proposals for either the purchase or lease of the property and develop a process by which the property is leased or sold that is fair and open.

### Lake Elsinore Unified School District

The Lake Elsinore Unified School District requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale of the property located at 21440 Lemon Street, Wildomar, CA, known as the former Jean Hayman Elementary School site, in a manner that best serves their schools and community. The district desires to use an RFP process in which they will seek proposals and negotiate with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the district. This RFP process 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 attractive to potential purchasers through the RFP process. The district already tried to sell the property through the bid process, but was unable to attract viable bids. The district has issued a prior RFP pursuant to a previously approved waiver, received proposals, identified the best proposal, and then entered into negotiations. However, the district was unable to finalize an agreement with the selected proposer and the waiver expired on November 6, 2016. Based on the responses received pursuant to the first RFP, the district believes it will receive valid proposals if it issues another RFP. The district will work to develop a strategic plan for advertising and marketing the property in order to solicit proposals from potential buyers interested in the property. 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.

### Orcutt Union Elementary School District

The Orcutt Union Elementary School District requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the lease of the Orcutt Key Site 17 property, located in the Rice Ranch Road area, south of Old Town Orcutt, in a manner that best serves their schools and community. The district has determined that this site is no longer needed for school purposes. It is the desire of the district to solicit qualified and financially stable potential lessees. The RFP and lease process for the property will allow the district more options to continue to provide a high-quality educational experience for its students, and will produce superior results and more value for the district and the community.

The district erroneously entered the following *EC* sections as part of the initial waiver request submission: 14577, 17461(a), 17471, and 17477. However, the district has clarified that these sections are not part of the waiver request.

### San Bruno Park Elementary School District

The San Bruno Park Elementary School District requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale orlease of the property located at 201 Balboa Way, San Bruno, CA, known as the El Crystal Elementary School site, in a manner that best serves their schools and community. The district has determined that this site is no longer needed for school purposes. It is the desire of the district to attract potential buyers who will not only pay maximum price for the property, but who will also enhance the surrounding neighborhood. Based on past sales of real property in our area and the location of the property, the district anticipates attracting a much greater interest from potential buyers or lessees through an RFP process than a bid process.

### Demographic Information

The Fountain Valley Elementary School District has a student population of 6,418 and is located in a suburban area of Orange County.

The Lake Elsinore Unified School District has a student population of 21,726 and is located in an urban area of Riverside County.

The Orcutt Union Elementary School District has a student population of 5,202 and is located in a suburban area of Santa Barbara County.

The San Bruno Park Elementary School District has a student population of 2,641 and is located in an urban area of San Mateo County.

**Because these are general waivers, if the SBE decides to deny the waivers, it must cite one of the seven reasons in *EC* 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. Waiver #1-11-2015 for Lake Elsinore Unified School District, available on the SBE Web page located at <https://www.cde.ca.gov/be/ag/ag/yr16/documents/jan16w04.doc>, was previously approved in January 2016 by the SBE and expired on November 6, 2016.

## Fiscal Analysis (as appropriate)

The flexibility in property disposition requested herein will allow these four school districts to maximize revenue from the sale or lease of their properties.

The Fountain Valley Elementary School District’s site has been owned for more than 10 years and there have been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the State Allocation Board (SAB).

The Lake Elsinore Unified School District’s site has been owned for more than 10 years and there have been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the SAB.

The Orcutt Union Elementary School District’s site has been owned for more than 10 years and there have been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the SAB.

The San Bruno Park Elementary School District’s sitehas been owned for more than 10 years and there have 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 SAB.

## Attachments

* **Attachment 1:** Summary Table (3 pages)
* **Attachment 2:**  Fountain Valley Elementary School District General Waiver Request 18-5-2018 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:**  Lake Elsinore Unified School District General Waiver Request 24-5-2018 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:**  Orcutt Union Elementary School District General Waiver Request 3-6-2018 (12 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:**  San Bruno Park Elementary School District General Waiver Request 16-5-2018 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *EC* Section 41402

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board and Public Hearing Date** | **Bargaining Unit, Representatives Consulted, Date, and Position** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- |
| 18-5-2018 | Fountain Valley Elementary School District | Approximately 12.9 acres of land improved with approximately 40,073 square feet of facilities located at 9790 Finch Avenue, Fountain Valley, California 92708, commonly known as the Fred Moiola School Site | **Requested:** May 22, 2018 to June 30, 2021  **Recommended:** September 12, 2018 to September 9, 2020 | Local Board Approval Date: 4/19/2018  Public Hearing Date: 4/19/2018  Public Hearing Advertised: Posted at school sites, and alternative locations in the district, including the surplus school site, as well as on the district web page. | California School Employees Association (CSEA) Fountain Valley Chapter #358 Gordon Llanos, President 4/18/2018 **Neutral**  Fountain Valley Education Association Christine Carrasco, President 4/11/2018 **Neutral** | Moiola School Surplus Property Advisory Committee 5/2/2018 |
| 24-5-2018 | Lake Elsinore Unified School District | Approximately 11.32 acres of property located at 21440 Lemon Street, Wildomar, CA, known generally as the district's former Jean Hayman Elementary School site | **Requested:** June 1, 2018 to June 1, 2019  **Recommended:** September 12, 2018 to June1, 2019 | Local Board Approval Date: 3/26/2018  Public Hearing Date: 4/12/2018  Public Hearing Advertised: On 3/26/18 notice was published in the Press Enterprise, and posted in two locations: District office and Vick Knight Library at Lakeside High School. On 3/27/18 notice posted at Elsinore Library | CSEA Adam McQueen, President 3/26/2018 **Support**  Lake Elsinore Teachers Association Bill Cavanaugh, President 3/26/2018 **Neutral** | Local Control Accountability Plan Committee 3/22/2018 |
| 3-6-2018 | Orcutt Union Elementary School District | 9.53 acres of land on the Orcutt Key Site 17, located in the Rice Ranch Road area, south of Old Town Orcutt | **Requested:** August 1, 2018 to August 1, 2020  **Recommended:** September 12, 2018 to July 29, 2020 | Local Board Approval Date: 6/7/2018  Public Hearing Date: 6/7/2018  Public Hearing Advertised: Santa Maria Times and the district office at 500 Dyer St. Orcutt CA 93455 | CSEA-California School Employees Association Phyllis Jackson, President 4/24/2018 **Support**  Orcutt Educators Association (OEA) Monique Segura, President 4/27/2018 **Support** | Real Property Advisory Committee 8/13/2014 |
| 16-5-2018 | San Bruno Park Elementary School District | El Crystal Elementary School site, located at 201 Balboa Way, San Bruno, CA | **Requested:** May 1, 2018 to June 30, 2020  **Recommended:** September 12, 2018 to  June 30, 2020 | Local Board Approval Date: 5/9/2018  Public Hearing Date: 1/22/2018  Public Hearing Advertised: Notice in newspaper, notice posted at each school site; agendized per the Brown Act | San Bruno Education Association Karen Byrne, SBEA President 4/12/2018 **Neutral** | 7-11 Committee 1/22/2018 |

Created by the California Department of Education

June 25, 2018

# Attachment 2: **Fountain Valley Elementary School District General** **Waiver Request 18-5-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3066498

Waiver Number: 18-5-2018

Active Year: 2018

Date In: 5/22/2018 1:54:08 PM

Local Education Agency: Fountain Valley Elementary School District

Address: 10055 Slater Ave.

Fountain Valley, CA 92708

Start: 5/22/2018

End: 6/30/2021

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 Fountain Valley 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 Fountain Valley School District ("District") owns approximately 12.9 acres of land improved with approximately 40,073 square feet of facilities located at located at 9790 Finch Avenue, Fountain Valley, California 92708, commonly known as the Fred Moiola School Site ("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: 6418

City Type: Suburban

Public Hearing Date: 4/19/2018

Public Hearing Advertised: It was posted at school sites, and alternative locations in the District, including the surplus school site, as well as on the District web page.

Local Board Approval Date: 4/19/2018

Community Council Reviewed By: Moiola School Surplus Property Advisory Committee

Community Council Reviewed Date: 5/2/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Christine Fullerton

Position: Assistant Superintendent, Business Services

E-mail: [fullertonc@fvsd.us](mailto:fullertonc@fvsd.us)

Telephone: 714-843-3251

Bargaining Unit Date: 04/18/2018

Name: CSEA Fountain Valley Chapter #358

Representative: Gordon Llanos

Title: President

Position: Neutral

Bargaining Unit Date: 04/11/2018

Name: Fountain Valley Education Association

Representative: Christine Carrasco

Title: President

Position: Neutral

# Attachment 3: **Lake Elsinore Unified School District General** **Waiver Request 24-5-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3375176

Waiver Number: 24-5-2018

Active Year: 2018

Date In: 5/28/2018 6:42:16 PM

Local Education Agency: Lake Elsinore Unified School District

Address: 545 Chaney St.

Lake Elsinore, CA 92530

Start: 6/1/2018

End: 6/1/2019

Waiver Renewal: Yes

Previous Waiver Number: 1-11-2015-W-04

Previous SBE Approval Date: 1/13/2016

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 Lake Elsinore Unified School District desires to waive the following sections and portions of the *Education Code.* 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].

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 Jean Hayman Elementary School site (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 purchase and sale agreement that provides the most benefit to the District.

The deleted language indicates that the sale of the Property will be made in the manner provided by this Article but 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, 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 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 purchase and sale 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 know when proposals must be brought back to the governing board for consideration. After issuing an RFP for the sale of the Property and discussing the proposals received from interested parties, the District will bring proposals to the governing board for further consideration.

*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 purchase and 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 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 purchase and 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 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 purchase and sale 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 sale terms that are more beneficial to the District. Thus, the District seeks to eliminate the language which requires it to sell 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 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 purchase and sale 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 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 purchase and sale 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 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 purchase and sale 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 Lake Elsinore Unified School District ("District") owns approximately 11.32 acres of property located at 21440 Lemon Street, Wildomar, CA, known generally as the District's former Jean Hayman Elementary School site ("Property"). The District's governing Board declared the Property surplus and decided to sell the Property pursuant to *Education Code* section 17466 et seq. Pursuant to the traditional "bid method" set for in *Education Code* section 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 through the bid process but did not receive any acceptable bids. Because of changing market conditions, the District now desires to solicit new proposals through a Request for Proposal ("RFP") process, as described below, for the sale of the Property.

The District seeks a waiver of certain portions of the sale procedure set forth in *Education Code* section 17466 et seq. so it can use an RFP process in which the District seeks proposals and negotiates with selected proposers to enter into a purchase and sale agreement that provides the most benefit to the District. This RFP process 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 potential purchasers through the RFP process.

The District already tried to sell the Property through the bid process but was unable to attract viable bids which demonstrates that the bid auction scenario is unlikely to attract serious and capable buyers to this Property. The District also previously issued a RFP pursuant to the previous waiver granted by the Department of Education. The District received proposals pursuant to the first RFP, identified the best proposal, and entered into negotiations with the best proposer. However, the District was unable to finalize an agreement with the selected proposer. Based on the responses received pursuant to the first RFP, the District believes it will receive valid proposals if it issues another RFP. As with the first RFP, the District needs the ability to be flexible and work with potential buyers 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 buyers interested in the Property.

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.

Student Population: 21726

City Type: Urban

Public Hearing Date: 4/12/2018

Public Hearing Advertised: On 3/26/18 notice was published in the Press Enterprise, and posted in two locations: District Office and Vick Knight Library at Lakeside High School. On 3/27/18 notice posted at Elsinore Library

Local Board Approval Date: 3/26/2018

Community Council Reviewed By: Local Control Accountability Plan Committee)

Community Council Reviewed Date: 3/22/2018

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: 562-653-3200 x3821

Bargaining Unit Date: 03/26/2018

Name: California Schools Employees Association

Representative: Adam McQueen

Title: President

Position: Support

Bargaining Unit Date: 03/26/2018

Name: Lake Elsinore Teachers Association

Representative: Bill Cavanaugh

Title: President

Position: Neutral

# Attachment 4: **Orcutt Union Elementary School District General** **Waiver Request 3-6-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 4269260

Waiver Number: 3-6-2018

Active Year: 2018

Date In: 6/8/2018 12:51:56 PM

Local Education Agency: Orcutt Union Elementary

Address: 500 Dyer St.

Orcutt, CA 93455

Start: 8/1/2018

End: 8/1/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: 17455, 14577, 17461(a), 17466, 17468, 17469, 17471, 17472,

17473, 17474, 17475, 17476, 17477, 17478

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: See Attachment #1

Outcome Rationale: See Attachment #2

Student Population: 5202

City Type: Suburban

Public Hearing Date: 6/7/2018

Public Hearing Advertised: Santa Maria Times and the District Office at 500 Dyer St. Orcutt CA 93455

Local Board Approval Date: 6/7/2018

Community Council Reviewed By: Real property Advisory Committee

Community Council Reviewed Date: 8/13/2014

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Julie Payne

Position: Administrative Assistant, Business Services

E-mail: [jpayne@orcutt-schools.net](mailto:jpayne@orcutt-schools.net)

Telephone: 805-938-8916

Fax: 805-938-8919

Bargaining Unit Date: 04/24/2018

Name: CSEA-California School Employees Association

Representative: Phyllis Jackson

Title: President

Position: Support

Bargaining Unit Date: 04/27 /2018

Name: OEA-Orcutt Educators Association

Representative: Monique Segura

Title: President

Position: Support

## Attachment 1: Waiver# 3-6-2018 Orcutt Union Elementary School District General

**Statutory Language Requested Waived**

The Orcutt Union School District (the "District") respectfully requests a waiver from further compliance with the following stricken provisions of the Education Code with respect to the proposed lease of District land to be developed and used as senior citizen housing (" Property"):

**Education Code § 17455**

"The governing board of any school district may sell any rea l 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]"

The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. The waiver requested in this section ensures that the District need not comply with the below-listed public auction statutes.

**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]."

The language proposed to be waived requires the District to establish a minimum price and receive sealed proposals for the lease of the Property at an identified meeting of the District's Board of Trustees. The District is requesting that the requirement of sealed proposals to purchase the Property be waived, allowing the District to negotiate the lease of the Property with interested parties. As the District cannot predict in advance the time of negotiations with interested parties, it cannot at the time of adopting the resolution contemplated by this Section 17 466 know when proposals must be brought back to the Board of Trustees for consideration. The District may utilize the services of a broker to advertise and solicit proposals for the lease of the Property and bring proposals to the Board of Trustees when necessary to consider the approval of a lease

**Education Code§ 17468**

"If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed) proposal [or stated in or with the oral bid), which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property."

The language proposed to be waived requires the District to receive sealed proposals and oral bids to lease the Property at an identified meeting of the District's Board of Trustees. The District is requesting that the requirement of sealed proposals and oral bidding to lease the Property be waived, allowing the District to negotiate the lease of the Property with interested parties.

**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]."

The language proposed to be waived assumes that the District would be setting a specific meeting to receive proposals for the lease of the Property. Such a requirement, however, will be removed pursuant to the language stricken with Education Code section 17466. As modified, the District would still be required to post notice of its adoption of a resolution of intent to lease the Property but would not have to incur the unnecessary expense of publishing such a notice in a newspaper.

**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]."

The language proposed to be waived requires the District to receive and open sealed proposals and oral bids to lease the Property at an identified meeting of the District's

Board of Trustees. The District is requesting that the requirement of sealed proposals and oral bidding to lease the Property be waived, allowing the District to negotiate the Lease of the Property with interested parties. As modified, the District would be allowed to consider and accept/reject any such proposal through an open or closed session meeting, as the District may do for any normal real property transaction under the Ralph M .Brown Act (Government Code sections 54950-54963.)

**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 offerer.]"

The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. This waiver removes references to the public auction or the auction process.

**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.]" The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. This waiver removes references to the public auction or the auction process.

**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]"

Modification of this Section 17475 would remove the requirement that the District's Board of Trustees accept a proposal at the same meeting received and would instead allow the Board of Trustees to consider proposals received and, as desired and appropriate, direct further negotiation.

**Education Code§ 17476**

"The governing body may [at the session], if it deems such action to be for the best public interest, [reject any and all bids, either written or oral, and] withdraw the property from sale or lease."

The District respectfully requests this waiver because it is seeking to avoid public auctions so that it may enter into direct negotiations to lease the Property. This waiver removes references to the public auction or the auction process but retains the District's right to withdraw the Property from lease, if necessary.

**Education Code§ 17478**

"Any resolution of acceptance (of any bid] made by the governing body authorizes and directs the president of the governing body, or other presiding officer, or the members thereof, to execute a deed or lease and to deliver it upon performance and compliance by the purchaser or lessee of all the terms or conditions of his or her contract to be performed concurrently therewith."

The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. This waiver removes references to the public auction or the auction process.

**Description and Outcome Rationale for**

In June 2006, the Orcutt Union School District ("District") retained a consultant to provide an Assessment management plan. Asset management plans, as applied to California School Districts, review alternative uses of vacant, underutilized, or nonperforming district sites. In that plan, the consultant recommended that 9.53 acres of land located on Orcutt Key Site 17 that was originally meant for a primary school ("Property") be deemed surplus property. On August 13, 2014, the District's real property advisory (or "7-11") committee determined the Property should also be deemed surplus property. The highest and best use of the Property according to a District appraisal and the 7-11 committee is senior housing.

After working for several years with the Santa Barbara County Planning Department along with the Planning Commission and upon their recommendation, on February 11, 2014, the Santa Barbara County Board of Supervisors voted unanimously to certify the Subsequent Environmental Impact Report and approve an amendment to the Orcutt Community Plan to modify the zoning and standards for Key Site 17, which would allow for a senior housing project.

The District seeks to waive the provisions requiring the District to conduct a formal bid process in which the District solicits bids and then enters into a lease or purchase agreement with the winning bidder. Instead, the District desires to lease the Property via an alternative "Request for Proposal" (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 RFP process will allow the District to maximize its return on the lease of the Property to the greatest extent possible while still being able to work with the County of Santa Barbara and the community to assure development standards that are compatible to the Orcutt community. The District anticipates that the location and qualities of the Property will make it extremely attractive to potential lessees through the RFP process.

In the current real estate market climate and due to the unique requirements of the Santa Barbra Planning Department, a formal bid process is unlikely to attract serious and capable lessees to this Property. The District needs to be flexible and work with potential lessees to create a valuable package. A waiver from the formal bid process requirements will allow the District to do this.

The District will develop a strategic plan for advertising and marketing the Property to solicit qualified and financially stable potential lessees.

The RFP and lease process for the Property will allow the District more options to continue to provide a high-quality educational experience for its students. The District will work closely with legal counsel to ensure that RFP and lease process is fair, competitive and open. As indicated above, the District believes that the RFP and lease process will produce superior results and more value to the District and the community, as opposed to a formal bid process.

## Attachment 2:

**Statutory Language Requested Waived**

The Orcutt Union School District (the " District") respectfully requests a waiver from further compliance with the following stricken provisions of the Education Code with respect to the proposed lease of District land to be developed and used as senior-citizen housing ("Property"):

**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]."

*The District respectfully requests this waiver because it is seeking to ovoid a public auction so that it may lease the Property to be developed as housing for senior citizens. The waiver requested in this section ensures that the District need not comply with the below-listed public auction statutes.*

**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]."

*The language proposed to be waived requires the District to establish a minimum price and receive sealed proposals for the lease of the Property at an identified meeting of the District's Board of Trustees. The District is requesting that the requirement of sealed proposals to purchase the Property be waived, allowing the District to negotiate the lease of the Property with interested parties. As the District cannot predict in advance the time of negotiations with interested parties, it cannot at the time of adopting the resolution contemplated by this Section 17466 know when proposals must be brought back to the Board of Trustees for consideration. The District may utilize the services of a broker to advertise and solicit proposals for the lease of the Property and bring proposals to the Board of Trustees when necessary to consider the approval of a lease.*

**Education Code § 17468**

"If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid], which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property."

*The language proposed to be waived requires the District ta receive sealed proposals and oral bids to lease the Property at an identified meeting of the District's Board of Trustees. The District is requesting that the requirement of sealed proposals and oral bidding to lease the Property be waived, allowing the District to negotiate the lease of the Property with interested parties.*

**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)."

*The language proposed to be waived assumes that the District would be setting a specific meeting to receive proposals for the lease of the Property. Such a requirement, however, will be removed pursuant to* *the language stricken with Education Code section 17466. As modified, the District would still be required to post notice of its adoption of a resolution of intent to lease the Property but would not have to incur the unnecessary expense of publishing such a notice in a newspaper.*

**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]."

*The language proposed to be waived requires the District to receive and open sealed proposals and oral bids to lease the Property at an identified meeting of the District's Board of Trustees. The District is requesting that the requirement of sealed proposals and oral bidding to lease the Property be waived, allowing the District to negotiate the Lease of the Property with interested parties. As modified, the*

*District would be allowed to consider and accept/reject any such proposal through an open or closed session meeting, as the District may do for any normal real property transaction under the Ralph M. Brown Act /Government Code sections 54950-54963.)*

**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, t hen 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 offerer.]"

*The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. This waiver removes references to the public auction or the auction process.*

**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.)"

*The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. This waiver removes references to the public auction or the auction process.*

**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]."

*Modification of this Section 174*75 *would remove the requirement that the District's Board of Trustees accept a proposal at the same meeting received and would instead allow the Board of Trustees to consider proposals received and, as desired and appropriate, direct further negotiation.*

**Education Code§ 17476**

"The governing body may [at the session], if it deems such action to be for the best public interest, [reject any and all bids, either written or oral, and) withdraw the property from sale or lease."

*The District respectfully requests this waiver because it is seeking to avoid public auctions so that* *it may enter into direct negotiations to lease the Property. This waiver removes references to the public auction or the auction process but retains the District's right to withdraw the Property from lease, if necessary.*

**Education Code§ 17478**

"Any resolution of acceptance [of any bid] made by the governing body authorizes and directs the president of the governing body, or other presiding officer, or the members thereof, to execute a deed or lease and to de liver it upon performance and compliance by the purchaser or lessee of all the terms or conditions of his or her contract to be performed concurrently therewith."

*The District respectfully requests this waiver because it is seeking to avoid a public auction so that it may lease the Property to be developed as housing for senior citizens. This waiver removes references to the public auction or the auction process.*

## Attachment 3:

**Description and Outcome Rationale for Waiver**

In June 2006, the Orcutt Union School District ("District") retained a consultant to provide an Assessment management plan. Asset management plans, as app lied to California School Districts, review alternative uses of vacant, underutilized, or non-performing district sites. In that plan, the consultant recommended that 9.53 acres of land located on Orcutt Key Site 17 that was originally meant for a primary school ("Property") be deemed surplus property. On August 13, 2014, the District's rea l property advisory (or "7-11") committee determined the Property should also be deemed surplus property. The highest and best use of the Property according to a District appraisal and the 7-11 committee is senior housing.

After working for several years with the Santa Barbara County Planning Department along with the Planning Commission and upon their recommendation, on February 11, 2014, the Santa Barbara County Board of Supervisors voted unanimously to certify the Subsequent Environmental Impact Report and approve an amendment to the Orcutt Community Plan to modify the zoning and standards for Key Site 17, which would allow for a senior housing project.

The District seeks to waive the provisions requiring the District to conduct a formal bid process in which the District solicits bids and then enters into a lease or purchase agreement with the winning bidder. Instead, the District desires to lease the Property via an alternative "Request for Proposal" (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 RFP process will allow the District to maximize its return on the lease of the Property to the greatest extent possible while still being able to work with the County of Santa Barbara and the community to assure development standards that are compatible to the Orcutt community. The District anticipates that the location and qualities of the Property will make it extremely attractive to potential lessees through the RFP process.

In the current real estate market climate and due to the unique requirements of the Santa Barbra Planning Department, a formal bid process is unlikely to attract serious and capable lessees to this Property. The District needs to be flexible and work with potential lessees to create a valuable package. A waiver from the formal bid process requirements will allow the District to do this. The District will develop a strategic plan for advertising and marketing the Property to solicit qualified and financially stable potential lessees.

The RFP and lease process for the Property will allow the District more options to continue to provide a high-quality educational experience for its students. The District will work closely with legal counsel to ensure that RFP and lease process is fair, competitive and open. As indicated above, the District believes that the RFP and lease process will produce superior results and more value to the District and the community, as opposed to a formal bid process.

# Attachment 5: **San Bruno Park Elementary School District General** **Waiver Request 16-5-2018**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 4169013

Waiver Number: 16-5-2018

Active Year: 2018

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

Local Education Agency: San Bruno Park Elementary School

Address: 500 Acacia Ave.

San Bruno, CA 94066

Start: 5/1/2018

End: 6/30/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

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

*Ed Code* Authority: 33050-33053

*Education Code* or *CCR* to Waive: See attachment A

Outcome Rationale: See attachment B

Student Population: 2641

City Type: Urban

Public Hearing Date: 1 /22/2018

Public Hearing Advertised: Notice in newspaper, notice posted at each school site; agendized per the Brown Act

Local Board Approval Date: 5/9/2018

Community Council Reviewed By: 7-11 Committee

Community Council Reviewed Date: 1/22/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Wendy Richard

Position: Associate Superintendent Business Services

E-mail: [wrichard@sbpsd.k12.ca.us](mailto:wrichard@sbpsd.k12.ca.us)

Telephone: 650-624-3101

Bargaining Unit Date: 04/12/2018

Name: San Bruno Education Association

Representative: Karen Byrne

Title: SBEA president

Position: Neutral

## Attachment A

The San Bruno Park School District desires to waive the following sections and portions of the Education Code lined out below:

**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 San Bruno Park School District requests the specified Education Code sections be waived in order to allow the District to maximize the return on the sale or lease of one of its sites in a manner that best serves our schools and community. The District would like to offer the property for sale or lease through Requests for Proposals followed by further negotiations using the services of a broker who will advertise and solicit proposals from potential buyers. The article referenced by Education Code Section 17455 consists of sections 17455 through 17484, which contain provisions regarding the sale or lease of rea l property that are inconsistent with the manner in which the District hopes to market the property.

The District will work closely with consultants to ensure that the process by which the property is sold or leased is fair, open, and competitive. The process the District will use will be designed to get the best result for the District, the schools, and the community.

**17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds votes 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 language to be waived provides for a minimum price or rental and requires sealed proposals to purchase or lease the property. This requirement restricts the District's flexibility in negotiating price, payments, and other terms that may yield greater economic and other benefits to the District than a sealed bid process.

**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 bypublishing 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: Since the District is requesting to waive the requirement that the resolution adopted pursuant to Education Code section 17466 fix a time not less than three weeks thereafter for a public meeting at which sealed proposals will be received and considered, it also seeks to waive the corresponding provisions in section 17469.

**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: With a waiver of the requirement that sealed proposals be received, and that the highest bidder be awarded the contract, the District will be able to sell or lease the property to the party that presents the most favorable proposal to the District. The Board would, therefore, be able to sell or lease to the party submitting the proposal that best meets the District's needs. By removing the requirement that an oral bid be accepted, the District would be able to determine what constitutes the most desirable bid.

**[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 District asks that this entire section be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids in addition to sealed bids.

**[17474. In the event of a sale on a higher oral bid to a purchaser procured bya 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 District asks that this entire section to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

**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: Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in disposing of the property disposal process. The District will ensure a public process whereby the reasons for the determination of the most desirable proposal is shared openly. Prior to the decision to sell or lease a site, a Property Advisory Committee, whose purpose is to advise the District's Governing Board in the development of District-wide policies and procedures governing the use or disposition of school buildings, space, or property which is not used for school purposes, establishes a priority list of use of surplus space and real property, provides for hearings of community input on acceptable uses of space and real property, and makes a recommendation to the Board regarding the uses of surplus space and real property. (*See*, Ed. Code, § 17388.)

## Attachment B

8. **Desired Outcome/Rationale**

The San Bruno Park School District desires to have the requested Education Code sections, or portions thereof, waived because the waiver of these sections will allow the District to maximize its return on the sale or lease of the District's El Crystal Elementary School site, located at 201 Balboa Way, San Bruno, California. The District has determined that this site is no longer needed for school purposes. It is the desire of the District to attract potential buyers who will not only pay maximum price for the property, but who will also enhance the surrounding neighborhood. Based on past sales of real property in our area and the location of the property, the District anticipates attracting a much greater interest from potential buyers or lessees through a Request for Proposal process than a bid process.