

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

# California State Board of Education July 2019 Agenda Item #W-08

## Subject

Request by the **Cypress Elementary School District** to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Number

18-3-2019

## Type of Action

Action

## Summary of the Issues

The Cypress Elementary School District (Cypress ESD) is requesting to waive all of California *EC* sections 17473 and 17474, and portions of 17455, 17466, 17468, 17470, 17472, and 17475, which will allow the district, as well as the neighboring community, to receive the maximum benefit on the sale or lease of one piece of property through the Request for Proposal (RFP) process.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends approval with the following conditions: that the proposal the Cypress ESD’s governing board determines to be the most desirable shall be selected within 60 days of the public meeting where the proposal was received, and that the reasons for that determination be discussed in public session and included in the minutes of the meeting.

## Summary of Key Issues

Under provisions of *EC* Section 33050, the district is requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

The Cypress ESD requests that the specified *EC* sections be waived in order to allow the district to sell or lease ~~of~~ one piece of real property, consisting of approximately 6.3 acres, located at 9470 Moody Street, Cypress, CA 90630, known as the District's Office Buildings ("property"). The district's governing board has declared the property surplus because it no longer uses or needs the property. The district has not attempted to dispose of the property through the statutorily prescribed sealed bid process, as they have determined that the flexibility provided by this waiver will afford a more mutually beneficial result for the district as well as the surrounding community.

The district will work closely with legal counsel to develop an RFP, seeking proposals for either the purchase or lease of the property that will both secure the maximum benefit to the district while still allowing flexibility to ensure that the intended use is compatible with the interests of the community. All efforts will be made to ensure that the process by which the property is sold or leased will be fair and open. The district will also work to develop a strategic plan for advertising and marketing the property.

### Demographic Information

The Cypress ESD has a student population of 3,937 and is located in a suburban area of Orange County.

**Because this is a general waiver, if the 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 district is requesting to waive the same or similar provisions for the sale or lease of surplus property.

## Fiscal Analysis (as appropriate)

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

The district has certified that the site has 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 reimbursement is not due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Cypress ESD General Waiver Request 18-3-2019 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

## California *EC* Section 17455 et seq.

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 18-3-2019 | Cypress Elementary School District | 9470 Moody Street, Cypress, CA, 90630, known as the District's Office Buildings | **Requested:** March 21, 2019 to September 21, 2020  **Recommended:** July 11, 2019 to September 21, 2020 | 2/14/2019 | 2/14/2019  Public Hearing Advertised: Public hearing notices were posted at the District Office site and at each school site. | Association of Cypress Teachers Lynn Lindsay, Acting President 3/7/2019 **Neutral**  California School Employees' Association Vickie Ohlman, President 3/7/2019 **Neutral** | District Advisory Committee 3/13/2019 **No Objections** |

Created by the California Department of Education

April 9, 2019

# Attachment 2: **Cypress Elementary School District General** **Waiver Request 18-3-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3066480

Waiver Number: 18-3-2019

Active Year: 2019

Date In: 3/22/2019 10:43:05 AM

Local Education Agency: Cypress Elementary School District

Address: 9470 Moody St.

Cypress, CA 90630

Start: 3/21/2019

End: 9/21/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale or Lease 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 Cypress Elementary School District ("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 17 466 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 offerer.]

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 Cypress School District ("District") owns approximately 6.337 acres of certain property located at 9470 Moody Street, Cypress, California, 90630, commonly known as the District's Office Buildings ("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 processwill allow the District to receive offers to both purchase or lease the Property and thendetermine 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: 3,937

City Type: Suburban

Public Hearing Date: 2/14/2019

Public Hearing Advertised: Posted

Local Board Approval Date: 2/14/2019

Community Council Reviewed By: District Advisory Committee

Community Council Reviewed Date: 3/13/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Rachel Cheong

Position: Legal Council

E-mail: [rcheong@aalrr.com](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\WAIVERS\2019\July%202019\Property%20Waivers\rcheong@aalrr.com)

Telephone: 562-653-3200

Bargaining Unit Date: 03/07/2019

Name: Association of Cypress Teachers

Representative: Lynn Lindsay

Title: Acting President

Position: Neutral

Bargaining Unit Date: 03/07/2019

Name: California School Employees' Association

Representative: Vickie Ohlman

Title: CSEA President

Position: Neutral