

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

Sale or Lease of Surplus Property

# California State Board of Education November 2019 AgendaItem #W-04

## Subject

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

## Waiver Numbers

* Lakeside Union Elementary School District: 9-8-2019
* Napa Valley Unified School District: 12-7-2019
* Poway Unified School District: 9-7-2019
* San Diego Unified School District: 7-8-2019

## Type of Action

Action, Consent

## Summary of the Issues

The Lakeside Union Elementary School District (Lakeside Union ESD) is requesting to waive portions of California *EC* Section 17472, which will allow the district to maximize the return on the sale of one piece of property in a manner that best serves its schools and community.

The Napa Valley Unified School District (Napa Valley USD) is requesting to waive all 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 of one piece of property in a manner that best serves its schools and community through the Request for Proposal (RFP) process, maximizing the benefit from the sale.

The Poway Unified School District (Poway USD) 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 to maximize the return on the sale or lease of one piece of property in a manner that best serves its schools and community through the RFP process, maximizing the benefit from the sale or lease.

The San Diego Unified School District (San Diego USD) is requesting to waive all of California *EC* sections 17472, 17473, and 17474, and portions of 17455, 17466, 17468, 17469, and 17475, which will allow the district to maximize the return on the lease of one piece of property.

## 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 districts’ governing boards determine to be the most desirable shall be selected within 60 days of the public meeting where the proposals were received, and that the reasons for those determinations be discussed in public session and included in the minutes of the meeting.

## Summary of Key Issues

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

### Lakeside Union ESD

Lakeside Union ESD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale of one piece of real property located at 9615 Temple Drive, Hanford, CA. The site was utilized as Gardenside School beginning in 1966, but the school has not been in use for instructional purposes since 2010. Since the school’s closure, the district has been utilizing the property for storage and as a bus stop location. The property has been listed with a licensed real estate agent, but no bids have been received. The district is requesting the waiver to allow negotiation outside of the bidding process for the sale of the property. Funds received from the sale will be used for capital facilities projects at Lakeside Elementary School, located at 9100 Jersey Ave. Hanford, CA.

### Napa Valley USD

Napa Valley USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale of one piece of real property located at 1185 Sierra Avenue, Napa, CA, known as the Vintage Farm/Nan de Leur Site, in a manner that best serves its schools and community. The district has determined that this site is no longer needed for school purposes. The site was previously used and operated by the district as a farm for educational purposes, but the district is relocating the farm from the site to a property located at 1375 Trower Avenue in Napa. It is the desire of the district to attract potential buyers who will enhance the surrounding neighborhood. Based on previous sales of real property in the area and the location of this specific property, the district anticipates attracting a greater interest from potential buyers through the RFP process. The district will work closely with consultants to ensure that the process by which the property is sold is fair and open.

### Poway USD

Poway USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale or lease of one piece of real property identified as APN Nos. 312-293-11-00, 306-250-27-00, and 306-020-32-00, and collectively known as the Black Mountain Ranch Southern Site, in a manner that best serves its schools and community. The site is vacant land and is made up of three parcels. The site has never been used for school purposes, but has been used for vehicle storage at various points in time, and the district’s governing board has declared the property surplus. The district is open to either selling or leasing the property—depending on which will be more beneficial to the district—via the RFP process. 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 ensure that the process by which the property is sold or leased is fair and open.

### San Diego USD

San Diego USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the lease of one piece of real property located at
6460 Boulder Lake Avenue, known as the Former Forward Elementary Site. The district declared the subject property surplus in July 1984 and it is currently leased to Specialized Education of California, Inc., which has occupied the property since 2005. The district only agreed to a short-term lease of 15 years and intends to negotiate a new lease with the existing in-place tenant to avoid substantial re-tenanting costs and any gap in rental income. Additionally, the tenant has planned facility improvements which will increase the overall value of the property.

### Demographic Information

Lakeside Union ESD has a student population of 325 and is located in a rural area of Kings County.

Napa Valley USD has a student population of 17,368 and is located in a suburban area of Napa County.

Poway USD has a student population of 36,450 and is located in an urban area of San Diego County.

San Diego USD has a student population of 125,250 and is located in an urban area of San Diego County.

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

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

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

## Fiscal Analysis

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

The districts have certified that the sites have 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.

## Attachments

* **Attachment 1:** Summary Table (4 pages)
* **Attachment 2:** Lakeside Union ESD General Waiver Request 9-8-2019
(2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Napa Valley USD General Waiver Request 12-7-2019 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Poway USD General Waiver Request 9-7-2019 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** San Diego USD General Waiver Request 7-8-2019 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-8-2019 | Lakeside Union Elementary School District | 961 Temple Drive, Hanford, CA (Gardenside School) | **Requested:**August 9, 2019 to August 20, 2020**Recommended:**November 7, 2019 to August 20, 2020 | 8/8/2019 | 8/8/2019Public Hearing Advertised: Posted on the district Web site and posted on the district property | Lakeside Teachers AssociationCourtney Lyons,LTA President8/8/2019**Support** | 7-11 Advisory Committee8/8/2019**No Objections** |
| 12-7-2019 | Napa Valley Unified School District | 1185 Sierra Avenue, Napa (Vintage Farm/Nan de Leur Site) | **Requested:**April 25, 2019 to April 24, 2021**Recommended:**November 7, 2019 to April 24, 2021 | 4/25/2019 | 4/25/2019Public Hearing Advertised: Notice advertised in the Napa Valley Register, and also posted on the district Web site and at the district office | California School Employees AssociationDaniel Mason, President4/3/2019**Neutral**Napa Association of Pupil ServicesCorinne Gomez, President4/3/2019**Neutral**Napa Valley Educators AssociationGail Young, President4/3/2019**Neutral** | Real Property Advisory Committee4/3/2019**No Objections** |
| 9-7-2019 | Poway Unified School District | APN Nos.312-293-11-00, 306-250-27-00, and306-020-32-00(Black Mountain Ranch Southern Site) | **Requested:**July 11, 2019 to July 11, 2021**Recommended:**November 7, 2019 to July 11, 2021 | 6/27/2019 | 6/27/2019Public Hearing Advertised: Notice as posted online and outside of District main office. Notice was also published in the Poway News Chieftain on 6/20/19 and the San Diego Union Tribune on 6/17/19 | Poway Federation of TeachersKelly Logan, President6/10/2019**Support**Poway School Employees AssociationCourtney Martin, President6/25/2019**Support**The Association of Poway School ManagersChristine Donnelly, President6/10/2019**Support** | District Surplus Property Advisory Committee6/1/2019**No Objections** |
| 7-8-2019 | San Diego Unified School District | 6460 Boulder Lake Avenue (Former Forward Elementary Site) | **Requested:**July 1, 2019 to July 1, 2020**Recommended:**November 7, 2019 to July 1, 2020 | 5/28/2019 | 5/28/2019Public Hearing Advertised: In accordance with the Brown Act and published on the district Web site, posted at the Education Center and other locations | Administrators Association of San DiegoDonis Coronel, Executive Director4/12/2019 - **Neutral**California School Employees Association – OSSMichael Breyette, Senior Labor Relations Representative4/12/2019 - **Support**California School Employees Association – OTBSDebora Beaver, Chapter President4/12/2019 - **Support**California School EmployeesAssociation – ParaeducatorsMichael Breyette, Senior Labor Relations Representative4/12/2019 - **Support**Police Officers AssociationJay Gresham, President4/12/2019 - **Neutral**San Diego Education AssociationKisha Borden, President4/12/2019 - **Neutral** | Independent Citizens Oversight Committee (ICOC)8/15/2019**No Objections** |

Created by the California Department of Education

August 13, 2019

# Attachment 2: Lakeside Union Elementary **School District General** **Waiver Request 9-8-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1663966

Waiver Number: 9-8-2019

Active Year: 2019

Date In: 8/26/2019 2:31:57 PM

Local Education Agency: Lakeside Union Elementary

Address: 9100 Jersey Ave.

Hanford, CA 93230

Start: 8/9/2019

End: 8/20/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17472

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: 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.

Outcome Rationale: Lakeside UESD has completed all requirements pertaining to the sale of surplus property located at 9615 Temple Drive, Hanford, CA, which was utilized as Gardenside School beginning in 1966. The school has not been in use for instructional purposes since 2010. No bids were received and the property was listed with a licensed real estate agent. Lakeside UESD has been utilizing the property since closure as storage and a bus stop location. Lakeside UESD requests the waiver to allow negotiation outside of the bidding process for the sale of the property. Funds received from the sale will be used for capital facilities projects at the district property at 9100 Jersey Ave. Hanford, CA, Lakeside Elementary School.

Student Population: 325

City Type: Rural

Public Hearing Date: 8/8/2019

Public Hearing Advertised: District Website and Posted on District Property

Local Board Approval Date: 8/8/2019

Community Council Reviewed By: 7-11 Advisory Committee

Community Council Reviewed Date: 8/8/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Cindi Marshall

Position: Superintendent/ Principal

E-mail: [cmarshall@lakeside.k12.ca.us](cmarshall%40lakeside.k12.ca.us)

Telephone: 559-582-2868 x101

Bargaining Unit Date: 8/8/2019

Name: Lakeside Teachers Association

Representative: Courtney Lyons

Title: LTA President

Position: Support

# Attachment 3: **Napa Valley Unified School District General** **Waiver Request 12-7-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 2866266

Waiver Number: 12-7-2019

Active Year: 2019

Date In: 7/17/2019 5:05:22 PM

Local Education Agency: Napa Valley Unified School District

Address: 2425 Jefferson St.

Napa, CA 94558

Start: 4/25/2019

End: 4/24/2021

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, 17469, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Napa Valley Unified School District desires to waive the following sections and portions of the *Education Code* ("*EC*"). Specifically, the

District requests that the language in brackets [] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district[, and shall be made in the manner provided by this article].

Rationale: The Napa Valley Unified 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 real 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.

*EC* 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.

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

Rationale: 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.

*EC* 17472. [At the time and place fixed in the resolution for the meeting of the governing body, all sealed] proposals which have been received shall, in public session, be opened, examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which 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.

*EC* 17473. (All)

[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.

*EC* 17474. (All)

[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 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.

*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: Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in disposing of the property. 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.)

Outcome Rationale: The Napa Valley Unified 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 of the District's Vintage Farm/Nan de Leur site, located at 1185 Sierra Avenue, Napa, CA 94558. The District has determined that this site is no longer need 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 the area and the location of the property, the District anticipates attracting a much greater interest from potential buyers through a Request for Proposal process than a bid process.

Student Population: 17,386

City Type: Suburban

Public Hearing Date: 4/25/2019

Public Hearing Advertised: Noticed per Brown Act, Legal Notice in Local Paper Run Date 4/14/19

Local Board Approval Date: 4/25/2019

Community Council Reviewed By: Real Property Advisory Committee

Community Council Reviewed Date: 4/3/2019

Community Council Objection: No

Community Council Objection Explanation: None

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jennifer Gibb

Position: Facilities Financial Analyst

E-mail: [jgibb@nvusd.org](jgibb%40nvusd.org)

Telephone: 707-253-6281

Bargaining Unit Date: 04/03/2019

Name: California School Employees Association

Representative: Daniel Mason

Title: President

Position: Neutral

Bargaining Unit Date: 04/03/2019

Name: Napa Association of Pupil Services

Representative: Corinne Gomez

Title: President

Position: Neutral

Bargaining Unit Date: 04/03/2019

Name: Napa Valley Educators Association

Representative: Gail Young

Title: President

Position: Neutral

# Attachment 4: **Poway Unified School District General** **Waiver Request 9-7-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3768296

Waiver Number: 9-7-2019

Active Year: 2019

Date In: 7/10/2019 6:56:44 PM

Local Education Agency: Poway Unified School District

Address: 15250 Avenue of Science

San Diego, CA 92128

Start: 7/11/2019

End: 7/11/2021

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 Poway Unified 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 Poway School District ("District") owns real property identified as APN Nos. 312-293-11-00; 306-250-27-00 and 306-020-32-00 and collectively known as the Black Mountain Ranch Southern Site ("Property"). The Property is currently vacant land and is not being used by the District. 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 through an alternative Request for Proposal (RFP) process. This RFP process will allow the District to issue a RFP package describing the Property and asking interested parties to submit proposals describing the terms and conditions of their proposed purchase or lease of the property. District staff, in consultation with legal counsel, will then review the RFP responses and determine which offer provides the most beneficial terms to the District by considering factors in addition to price, such as deposit structure, length of escrow, and the use of the Property. Further, the District will be able to consider both purchase and lease offers concurrently to determine which option will result in the best overall deal for the District.

The bid hearing process 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 of the bid hearing process will allow the District to do this through the RFP process. 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: 36,450

City Type: Urban

Public Hearing Date: 6/27/2019

Public Hearing Advertised: Notice as posted online and outside of District main office. Notice was also published in the Poway News Chieftain on 6/20/19 and the San Diego Union Tribune on 6/17/19.

Local Board Approval Date: 6/27/2019

Community Council Reviewed By: District Surplus Property Advisory Committee

Community Council Reviewed Date: 6/1/2019

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](smcloughlin%40aalrr.com)

Telephone: 562-653-3821

Bargaining Unit Date: 06/10/2019

Name: Poway Federation of Teachers

Representative: Kelly Logan

Title: President

Position: Support

Bargaining Unit Date: 06/25/2019

Name: Poway School Employees Association

Representative: Courtney Martin

Title: President

Position: Support

Bargaining Unit Date: 06/10/2019

Name: The Association of Poway School Managers

Representative: Christine Donnelly

Title: President

Position: Support

# Attachment 5: **San Diego Unified School District General** **Waiver Request 7-8-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3768338

Waiver Number: 7-8-2019

Active Year: 2019

Date In: 8/20/2019 2:59:37 PM

Local Education Agency: San Diego Unified School District

Address: 4100 Normal St.

San Diego, CA 92103

Start: 7/1/2019

End: 7/1/2020

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: All of 17472, 17473, 17474, and portions of 17455, 17466, 17468, 17469, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: See Exhibit A – attached

Outcome Rationale: See Exhibit B - attached

Student Population: 125,250

City Type: Urban

Public Hearing Date: 5/28/2019

Public Hearing Advertised: In accordance with the Brown Act and published on the District website, posted at the Education Center and other locations.

Local Board Approval Date: 5/28/2019

Community Council Reviewed By: Independent Citizens Oversight Committee (ICOC)

Community Council Reviewed Date: 8/15/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Gene Fuller

Position: Director

E-mail: [gfuller@sandi.net](gfuller%40sandi.net)

Telephone: 619-278-6724

Fax: 858-541-7854

Bargaining Unit Date: 04/12/2019

Name: Administrators Association of San Diego

Representative: Donis Coronel

Title: Executive Director

Position: Neutral

Bargaining Unit Date: 04/12/2019

Name: California School Employees Assn - OSS

Representative: Michael Breyette

Title: Senior Labor Relations Representative

Position: Support

Bargaining Unit Date: 04/12/2019

Name: California School Employees Assn - OTBS

Representative:

Title: Chapter President

Position: Support

Bargaining Unit Date: 04/12/2019

Name: California School Employees Assn - Paraeducators

Representative: Michael Breyette

Title: Senior Labor Relations Representative

Position: Support

Bargaining Unit Date: 04/12/2019

Name: Police Officers Association

Representative: Jay Gresham

Title: President

Position: Neutral

## EXHIBIT A

**SAN DIEGO UNIFIED SCHOOL DISTRICT**

### *Education Code* § 17455.

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

*Rationale:* The San Diego Unified School District requests the specified *Education Code* section be waived in order to allow the District to maximize the return on the lease of the site in a manner that best serves our schools and community. The District would like to enter into a direct negotiation with the existing in-place tenant. The language of *Education Code* Section 17455 stating that the sale or lease of real property is to be made in the manner provided by this article is inconsistent with the waivers the District is seeking.

The District will continue to ensure that the process by which the property is leased is designed to get the best result for the District, the schools, and the community.

### *Education Code* § 17466.

**Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its Intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased] and the commission, or rate thereof, •if any, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.]**

*Rationale:* The District is requesting that the requirement of sealed proposals to lease the property be waived, allowing the District to directly negotiate a new lease with the existing in-place tenant. By allowing the District to negotiate a new lease with the existing in-place tenant, the District will avoid substantial re-tenanting costs, no gap in rental income, no broker commissions, among other financial savings to the District during a period of severe budget restrictions. Additionally, the existing in-place tenant has planned facility improvements which will increase the overall value of the property. The language to be waived provides for a minimum price or rental and requires sealed proposals to lease the property. This requirement restricts the District's flexibility in negotiating price, payments, and terms that may yield greater economic benefit to the District. As the District cannot predict in advance the timing of negotiations with the existing in-place tenant, it cannot at the time of adopting the resolution know when the proposal must be brought back to the governing board for consideration.

### *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.**

*Rationale*: The stricken language to be waived provides for the District to receive sealed proposals and oral bids to purchase the property at an identified meeting of the District's governing board. The District is requesting that the requirement of sealed proposals and oral bidding to lease the property be waived, allowing the District to directly negotiate the lease of the property with the existing in-place tenant.

### *Education Code* § 17469.

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

*Rationale*: The stricken language to be waived assumes that the Board 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 within *Education Code* Section 17466. As modified, the District would still be required to provide notice of its adoption of a resolution of intent to lease the property, but the notice of the resolution in a newspaper would no longer be required.

### *Education Code* § 17472.

**[At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.]**

Rationale: By striking the requirement that sealed proposals and oral bids be received, and that the highest bidder be awarded the contract, the District will be able to enter into direct-negotiations with the existing in-place tenant.

### *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 attempted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]**

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

### *Education Code* § 17474.

**[In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]**

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

### *Education Code* § 17475.

**The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting held.**

*Rationale:* Rather than specifying a certain number of days or a timeframe, the proposed language provides flexibility while ensuring a public process whereby the agreed upon terms of the new lease with existing in-place tenant are shared openly.

## EXHIBIT B

**SAN DIEGO UNIFIED SCHOOL DISTRICT**

### Desired Outcome/Rationale

The San Diego Unified School District desires to have the requested *Education Code* sections waived because the waiver of these sections will allow the District to maximize its return on the lease of the property and provide for a use that best meets the needs of the schools and community. Since 2006, the existing in-place tenant has occupied the site and provided the District with a reliable revenue source. Even though *Education Code* allows a 99-year lease, when that original lease with the existing in-place tenant was executed, the District acted conservatively and only agreed to a short term lease of 15 years including all available options. The District should have initially entered into a longer-term lease with the existing in-place tenant.

By allowing the District to negotiate a new lease with the existing in-place tenant, the District will avoid substantial re-tenanting costs, no gap in rental income, any broker commissions, among other financial savings to the District during a period of severe budget restrictions. Additionally, the tenant has planned facility improvements would will increase the overall value of the property.

### The Property

Former Forward Elementary Site: The District declared the subject property surplus in 1984. This is an 11.12 acre former school site that is currently leased to Specialized Education of California, Inc., a non-profit special educational provider. It is located at 6460 Boulder Lake Avenue and was declared surplus in July of 1984. They have occupied the property since 2005. Specialized Education of California, Inc. has performed the terms of their lease satisfactorily, maintained the property in above-average condition and provided the District with a reliable revenue stream throughout their occupancy.