

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2020 AgendaItem #W-08

## Subject

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

## Waiver Number

1-6-2020

## Type of Action

Action, Consent

## Summary of the Issues

The South Pasadena Unified School District (South Pasadena USD) is requesting a waiver of California *Education Code* (*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.

## 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: (1) that the proposal a district’s governing board determines to be the most desirable shall be selected within 30 to 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; and (2) that prior to entering into negotiations, the governing board shall hold a public hearing where members of the public, including labor organizations, can discuss possible uses of the surplus property and share concerns regarding any impact on the community.

## 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.

South Pasadena USD owns approximately two acres of property located at 1020 El Centro Street, South Pasadena, CA 91030, commonly referred to as the District Office, though it should be noted that this is only the parking lot portion of the parcel that is the relevant in this case. 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 selling or leasing the property, depending on which will provide the district the most benefit. The district previously submitted a waiver for the property and was granted a waiver that expired in December 2018. The district did not enter into an agreement to sell or lease the property pursuant to the previous waiver approved in March 2018.

A publicly announced meeting of the school board was scheduled for March 28, 2020, in order to both reauthorize the surplus disposition of the property as well as provide the public with a mechanism to provide input. The district has not consulted another advisory committee since the Surplus Property Advisory Committee’s recommendations were adopted by the school board in January 2009, and the district is aware of the unusually long period of time which has transpired since then. To ensure the continued relevance of the original surplus determination, the district wanted to reaffirm the disposition of the property in a public forum. On March 28, 2020 the district’s board, at a virtual public meeting open to all, adopted a resolution which re-declared the property surplus and authorized district staff to seek a renewed waiver due to the fact that the circumstances related to the property had not changed since the previous waiver. 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 fair and open process by which the property is leased or sold.

### Demographic Information

South Pasadena USD has a student population of 4,794 and is located in Los Angeles 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.

Waiver #18-12-2017 was previously approved by the SBE as part of the March 2018 Agenda (Item #W-08) and it expired on December 14, 2018. It is available on the SBE Web page located at <https://www.cde.ca.gov/be/ag/ag/yr18/documents/mar18w08.docx>

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the district 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:** South Pasadena Unified School District General Waiver Request 1-6-2020 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-6-2020 | South Pasadena Unified | Approximately two acres of property known as the District Office(this is only the parking lot portion of the property) located at1020 El Centro St., South Pasadena, CA 91030 | **Requested:**June 1, 2020 to June 1, 2022**Recommended:**July 9, 2020 to June 1, 2022 | 5/28/2020 | 5/28/2020Public Hearing Advertised: Notice was posted at the District Office per the Brown Act and posted on the district's Web site | California School Employees Association Chapter 17Steven Reyes, President5/28/2020**Support**Teachers Association South PasadenaEstela Morales, President5/28/2020**Support** | Surplus Property Advisory Committee1/12/2009**No Objections** |

Created by the California Department of Education

June 4, 2020

## Attachment 2: **South Pasadena Unified School District General** **Waiver Request 1-6-2020**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1965029

Waiver Number: 1-6-2020

Active Year: 2020

Date In: 6/1/2020 5:22:39 PM

Local Education Agency: South Pasadena Unified

Address: 1020 El Centro St.

South Pasadena, CA 91030

Start: 6/1/2020

End: 6/1/2022

Waiver Renewal: Yes

Previous Waiver Number: 18-12-2017

Previous SBE Approval Date: 3/14/2018

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 South Pasadena Unified School District desires to waive the following sections and portions of the *Education Code* (“*EC*”). Specifically, the District requests that the language in brackets [] be waived:

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

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the lease 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 District owns approximately 2 acres of property located at 1020 El Centro St., South Pasadena, California 91030 commonly referred to as the District office (“Property”). The District previously submitted a waiver for the Property #18-12-2017 and was granted a waiver that expired in 2018. The District did not enter into an agreement to sell or lease the Property pursuant to the #18-12-2017 waiver. However, on March 28, 2020, the District Board adopted a new resolution that re-declared the Property surplus and authorized District staff to seek a renewed waiver because the circumstances related to the Property have not changed. A copy of this 2020 resolution is included with this waiver application.

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: 4,794

City Type: Urban

Public Hearing Date: 5/28/2020
Public Hearing Advertised: Notice of the hearing was posted at the District office, 1020 El Centro St., South Pasadena, California 91030, and the District website

Local Board Approval Date: 5/28/2020

Community Council Reviewed By: Surplus Property Advisory Committee
Community Council Reviewed Date: 1/12/2009
Community Council Objection: No
Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin
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Bargaining Unit Date: 05/28/2020
Name: California School Employees Association Chapter 17
Representative: Steven Reyes
Title: President
Phone: 626-441-5740
Position: Support

Bargaining Unit Date: 05/28/2020
Name: Teachers Association South Pasadena
Representative: Estela Morales
Title: President
Phone: 626-441-5830
Position: Support