

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

# California State Board of Education November 2020 AgendaItem #07

## Subject

Request by the **Torrance Unified School District** to waive California *Education Code* sections governing the process for selling or leasing surplus property.

## Waiver Number

1-11-2020

## Type of Action

Action, Consent

## Summary of the Issues

The Torrance Unified School District (Torrance USD) is requesting to waive all of California *Education Code* (*EC*) sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17470, 17472, and 17475. Those provisions provide for a sealed bid hearing process, which requires a district to specify terms and conditions for the sale or lease of surplus property, and then sell or lease to the highest bidder. By its request, Torrance USD seeks the ability to negotiate beneficial terms for a sale or lease with interested parties without having to select the highest bid for specified terms.

## 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; (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, including the potential relocation of the programs currently operating at the property; and (3) given the governing board’s authorization to pursue a waiver for the lease of the property, the waiver shall be granted for the lease of the property only. If the district decides to pursue the sale of the property, another waiver request would be needed.

## Summary of Key Issues

Torrance USD’s request relates to approximately 10.05 acres of real property, known as the Hamilton Adult Center, located at 2606 W. 182nd Street, Torrance, CA 90504. The district’s governing board has declared the property surplus, although it is currently using the property to house adult education programs and a Special Education Transition program. The district has stated that should a move be necessary, it will be able to move the programs currently located on the property to other district properties within the North Torrance area.

By its request, Torrance USD seeks the ability to negotiate terms for a sale or lease of the property with interested parties, following a Request for Proposal (RFP) process, instead of having to adhere to the formal sealed bid hearing process outlined in the *EC*.

The district’s Surplus Property Advisory Committee held six public meetings—starting in October 2017 and concluding in April 2018—to discuss possible uses and disposition of the property, culminating in a final report dated July 31, 2018. That committee dispersed after submitting its report to the governing board and has not met since.

On August 6, 2018, Torrance USD’s governing board: (1) accepted the final report of the Surplus Property Advisory Committee and its recommendation to deem the property surplus and to offer the property for lease; and (2) declared the property surplus, as well as its intent to seek a waiver of the above-referenced *EC* provisions to pursue a lease of the property.

Torrance USD submitted a waiver request one year later, on August 7, 2019. The district reports that the delay was due to allowing three new board members time to acclimate to their new duties and be brought up to speed on district business, including this waiver request, as well as allowing time to consult with employee bargaining units.

Torrance USD’s waiver request represented that the district had consulted with relevant employee bargaining units in February and April 2019, and that, among other things, the position of the California School Employees Association (CSEA), Chapter 19 was “neutral.” However, in November 2019, shortly before the State Board of Education (SBE) was scheduled to consider the waiver at its November 2019 meeting, CSEA 19 (under the leadership of then-President Kay Peterson) submitted a letter to the SBE alleging that its position was falsely represented in the waiver request, that “no unit member was ever given the information about the issue until just recently,” and that it opposed the waiver. That led CDE to remove the waiver request from the November 2019 agenda so that it could investigate this claim, as one of the statutory conditions that allows the SBE to deny a requested waiver is that the employee bargaining units were not “participant[s] in the development” of the waiver [*EC* Section 33051(a)(7)].

CDE learned that, prior to submitting its request, Torrance USD emailed each of its bargaining units’ then-current leaders in early 2019 to inquire as to their respective unit’s position, and received replies conveying that:

* Thethen-current leadership of CSEA 19 (President Monica Ingold) was “neutral” on the matter;
* The CSEA 845 advised that it opposed the district’s plan because “[t]here weren’t enough clear details to make a different decision”;
* The Service Employees International Union (SEIU), Chapter 99 was “neutral” on the matter; and
* The Torrance Teachers Association (TTA) advised that it “cannot support the Hamilton lease project at this time.”

CDE also learned that CSEA 845 continued to have unanswered questions about what would happen to the Special Education Transition classes, the adult English as a Second Language (ESL) classes, and the General Educational Development (GED) classes presently held at the site. Similarly, CDE learned that CSEA 19 had concerns about use and disposition of the property.

Due to the revelation of there still being outstanding concerns, and wanting to ensure that the employee bargaining units were participants in the development of the waiver, the CDE suggested that Torrance USD take steps to re-engage and consult with the bargaining units regarding their questions and concerns.

In response, Torrance USD withdrew the request and took steps to re-engage with their employees’ bargaining units. Specifically, the district called a meeting with CSEA 19 and CSEA 845, which was held in-person on December 17, 2019. In addition, on March 2, 2020, the district met with CSEA 19 and CSEA 845 representatives to further discuss the waiver, with a telephone conversation with TTA also taking place that same day to address any additional comments or questions about the waiver. Finally, the district had correspondence and additional conversations with CSEA 19 and CSEA 845 regarding the waiver on August 17, 2020, before actually resubmitting their waiver request on August 27, 2020.

In the course of CDE’s analysis, it has been determined via correspondence that three of the four bargaining units (CSEA 19, CSEA 845, and the TTA) register opposition to the waiver request. All three units cited similar rationale for opposing the waiver, including an alleged lack of transparency and a reluctance to have meaningful engagement on the district’s part; the district’s intention to proceed despite some cited community opposition; and the absence of a public statement as to where, specifically, the programs would be relocated. The fourth unit (SEIU 99) has yet to respond to repeated attempts at outreach, thus the neutral position it last provided still stands.

The district has stated that should a move be necessary, it is willing to relocate the programs, including the little league and softball activities, to other district-owned sites in the North Torrance area, which would represent an effort to address some of the concerns voiced. The district has indicated that a final decision on where the programs may be relocated has not yet been made because, among other things, there is a hope and belief that once the statutory sealed bid procedures are waived and the more flexible RFP process is employed, the district will be able to negotiate new potential outcomes related to the programs and interested parties.

As noted above, *EC* Section 33051(a)(7) allows the SBE to deny the waiver request if it finds that the district’s bargaining units were not “participant[s] in the development of the waiver.” CDE recognizes that some of the bargaining units remain opposed and have expressed dissatisfaction with the district’s level of engagement. However, given the history and specific circumstances of this matter, which involves substantial correspondence and repeated discussions between the parties over time, CDE believes that the bargaining units were ultimately afforded an adequate level of involvement. Therefore, CDE recommends approval of the waiver request with conditions, as referenced above.

**Demographic Information**

Torrance USD has a student population of 23,638 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 of surplus property.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the district to maximize revenue from the lease of the property.

The district has certified that the site has been owned for more than 10 years and there have been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Torrance Unified School District General Waiver Request
1-11-2020 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-11-2020 | Torrance Unified School District | 10.05 acres located at 2606 W. 182nd Street, Torrance, CA (Hamilton Adult Center) | **Requested:**November 5, 2020 to November 5, 2022**Recommended:**November 5, 2020 to November 3, 2022 | 8/6/2018 | 8/6/2018Public Hearing Advertised: Notice was published in the Daily Breeze newspaper on 7/28/18, and was also posted outside the district office 7/28/18 through 8/6/18 | California School Employees Association 19Denise Aguayo, President9/25/2020**Oppose**California School Employees Association 845Kathy Kelley, President9/25/2020**Oppose**Service Employees International Union Local 99Michael Haberberger,Small Unit Director2/22/2019**Neutral**Torrance Teachers AssociationDeborah Tabush, President9/24/2020**Oppose** | Surplus 7-11 Property Advisory Committee7/31/2018**No Objections** |

Created by the California Department of Education

September 2020

## Attachment 2: Torrance Unified **School District General** **Waiver Request 1-11-2020**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 1965060

Waiver Number: 1-11-2020

Active Year: 2020

Date In: 8/27/2020 5:33:02 PM

Local Education Agency: Torrance Unified School District

Address: 2335 Plaza Del Amo

Torrance, CA 90740

Start: 11/5/2020

End: 11/5/2022

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: 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 Torrance 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 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.

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 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 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 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, arid 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 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 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 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 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: Torrance Unified School District (“District”) owns approximately 10.05 acres of real property located at 2606 W. 182nd Street, Torrance, California 90504, commonly known as the Hamilton Adult Center (“Property”). The District previously submitted a waiver application to the State Board of Education (SBE) for the Property but the application was removed from the SBE’s agenda twice for the reasons set forth in the attached supporting documents (the “Supporting Documents”).

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 leasing property to conduct a formal bid hearing process in which the school district solicits bids and then enters into a lease 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 a lease. This RFP process will allow the District to receive offers to 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 a 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 lease is in the best interest of the District and establish the terms of the lease 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 the lease of the Property and develop a process by which the Property leased through a fair and open process.

Student Population: 23,638

City Type: Urban

Public Hearing Date: 8/6/2018

Public Hearing Advertised: Notice of the hearing published in the Daily Breeze, a local newspaper, on 7/28/18 and posted outside the District’s Office from July 28, 2018 through August 6, 2018.

Local Board Approval Date: 8/6/2018

Community Council Reviewed By: District formed a Surplus Property “7-11” Advisory Committee pursuant to Education Code 17388 eq seq

Community Council Reviewed Date: 7/31/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Stephen McLoughlin

Position: Attorney

E-mail: [stmcloughlin88@hotmail.com](file:///C%3A%5CUsers%5CTprouty%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5C00OU0O16%5Cstmcloughlin88%40hotmail.com)

Telephone: 562-519-7573

Bargaining Unit Date: 02/26/2019

Name: California School Employees Association 19

Representative: Denise Aguayo

Title: President

Phone: 310-972-6045

Position: Oppose

Comments: CSEA 19 communicated its opposition to the waiver with SBE discussed in the attached documents

Bargaining Unit Date: 02/24/2019

Name: California School Employees Association 845

Representative: Kathy Kelley

Title: President

Phone: 626-258-3334

Position: Oppose

Comments: CSEA 845 discussed its opposition to the waiver with SBE as discussed in the attached documents

Bargaining Unit Date: 02/22/2019

Name: Service Employees International Union Local 99

Representative: Michael Haberberger

Title: Small Unit Director

Phone: 213-387-8393

Position: Neutral

Comments:

Bargaining Unit Date: 04/02/2019

Name: Torrance Teachers Association (TTA)

Representative: Deborah Tabush

Title: President

Phone: 310-320-8200

Position: Neutral

Comments: