

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2020 Agenda Item #W-04

## Subject

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

## Waiver Number

3-6-2020

## Type of Action

Action

## Summary of the Issues

The Oakland Unified School District (Oakland USD) is requesting to waive all of California *EC* sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, 17472, and 17475, which will allow the district to maximize the return on the lease of two pieces of property through the Request for Proposal (RFP) process, maximizing the benefit from the leases.

## Authority for Waiver

California *Education Code (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; and (3) pursuant to the district’s waiver request, the waiver shall be granted for the lease of the two pieces of surplus property. If the district decides to pursue the sale of either property, another waiver request would be needed.

## Summary of Key Issues

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

Oakland USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the lease of two pieces of real property—one located at 2455 Church St., Oakland, CA 94605 and known as the former Edward Shands Adult School, and the other located at 4551 Steele St, Oakland, CA 94619 and known as the former Tilden Child Development Center—in a manner that best serves their community. The properties have been declared surplus by the district’s 7-11 Committee and the district would like to offer the properties for lease through the RFP process, followed by further negotiations using the services of a broker who will advertise and solicit proposals from potential lessees. The district will work closely with consultants to ensure that the process by which the property is leased is fair, open, and competitive.

The American Federation of School County Municipal Employees (AFSCME), has registered a neutral position to the waiver request. The other two bargaining units—the Oakland Education Association (OEA) and Service Employees International Union (SEIU) 1021—are opposed to the waiver request. The OEA has cited a lack of a comprehensive plan to utilize Oakland USD facilities in the early-childhood-to-adult education programs. SEIU 1021, through subsequent email correspondence, has confirmed that it seconds OEA’s opposition, and further cites a belief that, even though the district only wishes to lease the properties, the waiving of the bidding process will somehow lead to the sale of properties.

Assembly Bill 1840 provided emergency funding from the legislature to Oakland USD over three years, to deliver almost $35 million to the district to help stabilize its budget and protect students. This bill authorized Oakland USD—if the school district has an outstanding emergency apportionment loan, until the emergency apportionment loan is repaid—to sell or lease surplus real property, together with any personal property located on the real property, owned by the school district and use the proceeds from the sale or lease to service, reduce, or retire the debt on the emergency apportionment loan, or for capital improvements of the school district’s facilities. Senate Bill (SB) 74 (Budget Act of 2020) reappropriates $16,009,000 of the $35 million from AB 1840 to the Superintendent of Public Instruction for allocation to Oakland USD in accordance with *EC* sections 42160–42161. The disbursement of these funds is contingent on Oakland USD’s completion of the following: (a) affirmative action by the governing board to continue planning for, and timely implement, a school and facility closure and consolidation plan that supports the sale or lease of surplus property; (b) the required annual audit for the preceding year filed no later than December 15; and (c) affirmative board action to continue to update or develop short-term and long-term financial plans based on best practices and reasonable and accurate assumptions. Oakland USD has presently paid down $95,467,720 (including interest) of its $100,000,000 in emergency state loan funds and still owes $23,091,411 as of July 2020.

The current course of action proposed by the district will allow it to meet the criteria stipulated in SB 74, and the approval of this waiver request by the SBE is in alignment with all similar previous waiver requests of this type.

### Demographic Information

Oakland USD has a student population of 35,938 and is located in an urban area of Alameda 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 lease of surplus property. The district is requesting to waive the same or similar provisions for the lease of surplus property.

## Fiscal Analysis

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

The district has certified that the two sites have been owned for more than 10 years and therehave been no improvements to either 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:** Oakland USD General Waiver Request 3-6-2020 (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** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- |
| 3-6-2020 | Oakland Unified School District | 2455 Church St. (the former Edward Shands Adult School) and 4551 Steele St. (the former Tilden Child Development Center) | **Requested:** September 10, 2020 to September 8, 2022  **Recommended:** September 11, 2020 to September 8, 2022 | 6/10/2020  Public Hearing Date: 6/10/2020  Public Hearing Advertised: The public hearing was advertised in the Oakland Tribune. | American Federation of School County Municipal Employees, Local 257, Melisha Linzie, President 5/1/2020 **Neutral**  Oakland Education Association Keith Brown, President 5/1/2020 **Oppose \***  Service Employees International Union 1021 Melvin Phillips, President 5/1/2020 **Oppose \***  \*Opposition to the waiver centers on the desire to not have the properties sold. | Citizens’ Bond Oversight Committee 5/11/2020 **No Objections** |

Created by the California Department of Education

July 2020

# Attachment 2: **Oakland Unified School District General** **Waiver Request 3-6-2020**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 0161259

Waiver Number: 3-6-2020

Active Year: 2020

Date In: 6/11/2020 9:16:37 AM

Local Education Agency: Oakland Unified

Address: 1000 Broadway, Ste. 300

Oakland, CA 94607

Start: 9/10/2020

End: 9/8/2022

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

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

Outcome Rationale: The Oakland Unified School District Board of Education passed its 2020 Facilities Master Plan (Plan) indicating facilities needs from early childhood, TK-12 and Adult Education in May, 2020.

As part of the development of the Plan, the Board convened a 7-11 Committee to review 5 vacant properties for potential surplus, including: 2455 Church St., CA 94605 (the former Edward Shands Adult School), and 4551 Steele St, Oakland, CA 94619 (the former Tilden Child Development Center). The 7-11 committee recommended and the Board voted to surplus two properties in order to pursue a long-term lease. The District's Asset Management Policy indicates a priority for lease over a sale.

The District desires to have the requested *Education Code* sections, or portions thereof, waived to allow the District to maximize value to the community from its return on the lease of Shands and Tilden.

The District has determined that these two sites are no longer needed for school purposes. It is the desire of the District to attract potential lessees who will benefit both the District and the neighborhood. The District anticipates attracting a much greater interest from potential lessees through a Request for Proposal process than a bid process.

Student Population: 35,938

City Type: Urban

Public Hearing Date: 6/10/2020

Public Hearing Advertised: The public hearing was advertised in the Oakland Tribune.

Local Board Approval Date: 6/10/2020

Community Council Reviewed By: Citizens’ Bond Oversight Committee

Community Council Reviewed Date: 5/11/2020

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jody Talkington

Position: Senior Director of Strategic Projects, Supt Office

E-mail: [jody.talkington@ousd.org](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2020\September%202020\Property\jody.talkington@ousd.org)

Telephone: 510-388-3304

Bargaining Unit Date: 5/1/2020

Name: American Federation of School County Municipal Emp

Representative: Melisha Linzie

Title: President

Phone: (510) 459-0567

Position: Neutral

Bargaining Unit Date: 5/1/2020

Name: Oakland Education Association

Representative: Keith Brown

Title: President

Phone: (510) 763-4020

Position: Oppose

Comments: See attached response from OEA

Bargaining Unit Date: 5/1/2020

Name: Service Employees International Union 1021

Representative: Melvin Phillips

Title: President

Phone: (510) 350-4527

Position: Oppose

Comments: Same Rationale as OEA (See attached response from OEA)

**Attachment A**

***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 Oakland Unified School District requests the specified *Education Code* sections be waived in order to allow the District to maximize the value to the District and the neighborhood from the long-term lease of two of its sites. The District would like to offer the property for lease through Requests for Proposals followed by further negotiations using the services of a broker who will advertise and solicit proposals from potential lessees. The article referenced by *Education Code* Section 17455 consists of sections 17455 through 17484, which contain provisions regarding the 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 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.

***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 language to be waived provides for a minimum rental and requires sealed proposals to 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.

***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 lease 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 negotiate the leases of the Former Edward Shands Adult School and Former Tilden CDC Sites with an interested lessee selected through an RFP process.

***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 leases of the Former Edward Shands Adult School and the Former Tilden CDC.

***Education Code* § 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 stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the lease of the Former Edward Shands Adult School and Former Tilden CDC Sites. 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.

***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: 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 lease the property to the party that presents the most favorable proposal to the District. The Board would, therefore, be able to 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.

***Education Code* § 17473.**

[Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The District asks that this entire section be waived because the District, in negotiating an agreement to lease the property, will not be accepting oral bids in addition to sealed bids.

***Education Code* § 17474.**

[In the event of a sale on a higher oral bid to a purchaser procured by a licensed realestate broker, other than the broker who submitted the highest written proposal, andwho is qualified as provided in Section 17468 of this code, the board shall allow acommission on the full amount for which the sale is confirmed. One-half of thecommission on the amount of the highest written proposal shall be paid to the brokerwho submitted it, and the balance of the commission on the purchase price to thebroker 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 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 within the 10 days next following].

Rationale: Modification of the section would remove the requirement that the governing board accept a proposal at the same meeting received, and would instead allow the governing board to consider proposals received and, as desired and appropriate, direct further negotiation.

The preceding sections, which are section 17455, 17466, 17468, 17469, 17470, 17472 through 17475, have strike-out but indicate the exact language being waived and is still valid.