

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2023 AgendaItem #W-03

## Subject

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

## Waiver Number

5-10-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Hayward Unified School District (USD) is requesting to waive all of California *Education Code (EC)* sections 17473 and 17474, and portions of sections 17455, 17466, 17469, 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. This waiver does not grant the Hayward USD permission to dispose of these sites, which the district has authority to do without State Board of Education (SBE) approval. Granting the waiver authorizes the district to utilize a more flexible Request for Proposal (RFP) process which allows the consideration of factors beyond the highest bid. By its request, Hayward USD seeks the ability to negotiate beneficial terms for sales or leases with interested parties in a manner that best serves its schools and community, through the RFP process.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends approval with the following conditions:

1. The proposal that the Hayward USD’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. 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.

## Summary of Key Issues

Under provisions of *EC* Section 33050, Hayward USD requests that the specified *EC* sections be waived in order to allow the district to maximize their flexibility in negotiating the sale or lease of eight pieces of real property located throughout the school district. Each site is listed below, where they are discussed in greater detail.

Hayward USD has been suffering a decline in enrollment for 20 years. In the 2001–02 school year, the district had over 24,000 students. In the 2021–22 school year, that number was 18,075, a 25 percent decline. Over the next 6 years, a demographer hired by the district is projecting a further 17 percent decline in the district due to changing demographics as well as overall decreases in population in Alameda County. The District is also facing structural budget problems, including hundreds of millions of dollars in deferred maintenance on existing facilities.

In the face of these challenges, the District began a process in December 2019 of identifying sites that were either already closed or that could be closed, and their programs consolidated to other locations. After extensive public consultation, this process resulted in recommendations for boundary changes, site closures, and program consolidations in October of 2021. In 2022, the District formed a Surplus Property Advisory Committee, commonly known as a “7-11 Committee”, to examine each of these sites and make recommendations, not only as to whether or not they should be declared surplus, but also the preferred uses of each site. These recommendations were based on community outreach and surveying, as well as a series of six public meetings. Surveys offered members of the public options for each site, such as affordable housing, community centers, district employee housing, student/youth housing, parks, etc. Top uses for each site were identified and included in the 7-11 Committee recommendation. Hayward USD is requesting a waiver to utilize the RFP process in order to allow the district to negotiate outcomes for these sites that are reflective of the community’s expressed desires, rather than simply select the highest bid offered for each location.

Despite the unanimous vote of the Hayward USD board in favor of seeking a waiver, there was significant public opposition, as well as interest in continued efforts at transparency and community outreach. District staff were also directed to put together a public committee, composed of the current 7-11 Committee members, including additional stakeholders from the community, to review all additional data including surveys and data from the full transitions team, impacts to receiving schools, and impacts to the communities of Bowman Elementary and Strobridge Elementary, in order to advise the board on recommendations for beneficial uses of the sites. The board adopted this new committee and appointed its initial membership on February 15, 2023.

It should be noted that it was unclear how much of the opposition at the meeting was in direct response to the waiver itself, and how much of it was in reaction to Hayward USD’s decision to surplus former school sites and close or transfer the programs they house. That decision is separate from the waiver process and remains unaffected by approval or denial of this waiver request. Further, the results of the survey done by the district, and the comments made at the board meeting indicated strong opposition to these sites being commercially developed or sold as market-rate housing by the public. CDE staff believe that authorizing the district to engage in the RFP process through a waiver with the proposed conditions provides the greatest likelihood of ensuring a transparent process for the public to engage in this matter.

### Bidwell Elementary, 175 Fairway Street

Bidwell Elementary was closed on June 30, 1989. Half of the original site was sold by the district in 2019, while the remainder of the site continues to be vacant.

### Bowman Elementary, 520 Jefferson Street

Bowman Elementary was closed on June 14, 2022, and remains vacant. The decision to close the school was made in November 2021 despite significant parent opposition due to an anticipated $14 million deficit and the continued decline in districtwide enrollment.

### Cherryland Site, 585 Willow Avenue

This is the former site of Cherryland Elementary School, which has since been moved to a newer facility. After the move, the site most recently served as temporary housing for students of Harder School as that site was also upgraded. Those upgrades have since been completed, and the site is now on short-term lease by a charter school. Hayward USD has committed to working together with the charter school on a location whether or not they pursue a longer-term lease of the Cherryland site.

### Student Information & Assessment Center, 27211 Tyrrell Avenue

The Student Information & Assessment Center was closed in June of 2022. The decision to close the site was made in November 2021 despite significant parent opposition due to an anticipated $14 million deficit and the continued decline in districtwide enrollment.

### Strobridge Elementary, 21400 Bedford Drive

Strobridge Elementary was closed on June 14, 2022 and remains vacant. The decision to close the school was made in November 2021 despite significant parent opposition due to an anticipated $14 million deficit and the continued decline in districtwide enrollment.

### Highland Site, 2021 Highland Boulevard

Highland housed Hayward USD special education programs. The site was closed July 30, 2021, and the programs have been transferred to other locations.

### Laurel Site, 2652 Vergil Court

Laurel Elementary School was closed on June 30, 1989. It later housed a Montessori preschool which closed June 30, 2021, and is currently vacant.

### Piexoto Site, 29150 Ruus Road

Piexoto Children’s Center was a preschool site closed on June 30, 1989. It currently houses a non-district preschool.

### Demographic Information

Hayward USD is an urban school district in the city of Hayward, within Alameda County. It has a population of 18,075 students.

**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 district is 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 district to maximize value from the saleor lease of the properties.

The district has certified that the sites have 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:** Hayward Unified School District General Waiver Request 5-10-2022 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Exhibit 1 (3 pages)

# Attachment 1: Summary Table

California *EC* Section 17455 et seq.

| **Waiver Number** | **District** | **Properties** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-10-2022 | Hayward Unified School District | 175 Fairway Street; 520 Jefferson Street; 585 Willow Avenue; 27211 Tyrrell Avenue; 21400 Bedford Drive; 2021 Highland Boulevard;2652 Vergil Court; 29150 Ruus Road | **Requested:**November 1, 2022, toNovember 1, 2024**Recommended:**November 1, 2022, toOctober 30, 2024 | 6/16/2022 | 9/28/2022Public Hearing Advertised: local newspaper, district website | Association of Educational Office & Technical Employees Deisy BatesPresident09/28/2022**Neutral**Hayward Education AssocationMercedes FarajPresident09/27/2022**Neutral** | District Surplus Property Advisory Committee 6/16/2022**No Objections** |

Created by the California Department of Education
March 2023

# Attachment 2: **Hayward Unified School District General** **Waiver Request 5-10-2022**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0161192

Waiver Number: 5-10-2022

Active Year: 2022

Date In: 10/17/2022 10:09:25 AM

Local Education Agency: Hayward Unified

Address: 24411 Amador St.

Hayward, CA 94544

Start: 11/1/2022

End: 11/1/2024

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455 through 17484

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: 17455, 17466, 17472, 17473, 17474, 17475. Please see Exhibit "1" of the Board approved resolution.

Outcome Rationale: Please see Exhibit "1" of the Board approved resolution.

Student Population: 18089

City Type: Urban

Public Hearing Date: 9/28/2022

Public Hearing Advertised: Notice in a newspaper.

Local Board Approval Date: 9/28/2022

Community Council Reviewed By: 7-11 District Advisory Committee

Community Council Reviewed Date: 6/16/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Allan Garde

Position: Assistant Superintendent, Business

E-mail: agarde@husd.k12.ca.us

Telephone: 510-784-2600

Fax:

Bargaining Unit Date: 09/15/2022

Name: Assoc of Edu Office & Technical Employees (AEOTE)

Representative: Deisy Bates

Title: President

Phone: dbates@husd.us

Position: Neutral

Comments:

Bargaining Unit Date: 09/15/2022

Name: Hayward Education Association (HEA)

Representative: Mercedes Faraj

Title: President

Phone: president@heahayward.org

Position: Neutral

Comments:

# Attachment 3: Exhibit 1

The Hayward Unified School District desires to waive the following sections and portions of the Education Code, language proposed to be waived is bracketed and in italics below:

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 Hayward 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 its former school sites in a manner that best serves our schools and community. The District would like to offer the properties 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 purchasers or lessors. 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 properties. The District will work to ensure that the process by which the properties are sold or leased is fair, open, and competitive. The process the District will use will be designed to align with Board goals and get the best result for the District and the community.

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 sell or lease the properties. 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.

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.

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 properties 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.

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 sell or lease the properties, will not be accepting oral bids in addition to sealed bids.

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 District asks that this entire section be waived because the District, in negotiating an agreement to sell or lease the properties, will not be accepting oral bids in addition to sealed bids.

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 selling or leasing the properties. The District will ensure a public process whereby the reasons for the determination of the most desirable proposal for each property is shared openly.

Desired Outcome/Rationale

The Hayward 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 or lease of the District’s former school sites or other sites that are not needed for school purposes, as follows:

* 175 Fairway Street
* 520 Jefferson Street
* 585 Willow Avenue
* 27211 Tyrrell Avenue
* 21400 Bedford Drive
* 2021 Highland Boulevard
* 2652 Vergil Court
* 29150 Ruus Road

The District has determined that these sites are no longer needed for school purposes. It is the desire of the District to attract potential lessors or purchasers who will not only pay maximum price for the properties but who will also enhance the surrounding neighborhoods. Based on past sales and leases of real property in the area and the location of the properties, the District anticipates attracting a much greater interest from potential purchasers or lessors through a Request for Proposal process than a bid process.