

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education Sept 2022 Agenda Item #W-03

## Subject

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

## Waiver Number

8-3-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Jefferson Union High School District (HSD) is requesting to waive all of California *Education Code (EC)* sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, 17472, and 17475, which will allow the district to lease one piece of property through the Request for Proposal (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) that the proposal the 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

Under provisions of *EC* Section 33050, Jefferson Union High School District (HSD) is requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived in order to allow the district to lease one piece of real property. The property is located at 699 Serramonte Boulevard in Daly City and currently provides adult school and adult transition program facilities, as well as an educational garden for district students, but is no longer needed for the district’s use, as these programs will be relocated to new facilities constructed to meet their unique needs. The site also houses several private interests including a church, a non-district preschool, and a martial arts dojo. The district plans to seek parties interested in developing the property. The new development will include subsidized teacher housing, a new community garden and other open spaces, as well as market-price housing and retail space, while providing the district with an additional source of revenue.

At the regularly scheduled meeting on August 17, 2021, the Jefferson Union HSD governing board adopted Resolution No. 2021-22/4 authorizing the formation of a 7-11 Real Property Advisory Committee (“7-11 Committee”). The 7-11 Committee held five public meetings between August 23, 2021 and October 4, 2021, when they approved their report to the Jefferson Union HSD recommending that the Serramonte Boulevard property be declared surplus to the district’s educational needs. The district’s governing board declared the property surplus on October 19, 2021.

Some members of the community have objected to the district’s development plan due to the loss of the garden located on the site. This garden, which is approximately one acre in size, was initially created by the district for use by district students. Over time, due to lack of funding, the site fell into disuse. Without the district’s knowledge or prior authorization, members of the community began to make use of the garden. This has complicated district efforts to utilize the garden for students, since access by the general public presents safety concerns. Members of the community who have been using the garden, including members of the Native American community, object to the loss of this green space and have created a petition and provided public comment during the district’s 7-11 Committee process, as well as at school board meetings. The district has met with these community members numerous times, and has committed to including green space in the development, including walking paths and a new garden compliant with the *Americans with Disabilities Act*. The land has no known tribal or cultural significance, and was previously developed as a tennis court.

The decision to declare the property, including the garden, surplus has already been made and will not be affected by this waiver. Approval of this waiver determines the process the district must use to solicit proposals for development of the site, but will not affect its surplus status. The district will work to develop a strategic plan for advertising the property in order to solicit proposals. The district will also work closely with its legal counsel to ensure that the process by which the properties are leased is fair and open.

### Demographic Information

Jefferson Union HSD is an urban school district with a student population of 4,490 and is located in northern San Mateo County, serving the cities of Daly City, Brisbane, and Pacifica.

**Because this is a general waiver, if the State Board of Education (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 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 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 Facility 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:** Jefferson Union High School District General Waiver Request 8-3-2022 (7 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** | **Properties** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| 8-3-2022 | Jefferson Union High School District | 699 Serramonte Boulevard, Daly City, CA 94015 | **Requested:** April 1, 2022 to April 1, 2025  **Recommended:** April 1, 2022 to March 30, 2024 | 2/15/2022 | 2/15/2022  Public Hearing Advertised: Brown Act posting; website; all district school sites; city halls; public libraries | American Federation of Teachers  Monica Casey, AFT Local 1481 President  2/9/2022  **Support** | District Advisory Council 10/4/2021 **No Objections** |

Created by the California Department of Education

July 2022

# Attachment 2: Jefferson Union High School District General Waiver Request 8-3-2022

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4168924

Waiver Number: 8-3-2022

Active Year: 2022

Date In: 3/8/2022 9:18:55 AM

Local Education Agency: Jefferson Union High

Address: 699 Serramonte Blvd., Ste.100

Daly City, CA 94015

Start: 4/1/2022

End: 4/1/2025

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

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: The Jefferson Union High School District (“District”) desires to waive the following sections and portions of the *Education Code* to allow the District to pursue a lease of the Property. 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 District seeks to remove this language to the extent it suggests the District’s lease of the property must be “made in the manner provided by this article” because the District’s request for a waiver of the other portions of the *Education Code*, as set forth in the waiver application, as well as the District’s request to use the Request for Proposal process, will create a process that is not “in the manner provided by this article.” Thus, the District requests to waive only this portion of Section 17455. The remaining portion of Section 17455 will still apply to the District’s process.

*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 of the Property. Specifically, the District desires to 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 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 lease of the Property. Specifically, the District desires to 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 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 lease of the Property with an interested purchaser.

*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: Because 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 *Education Code* section 17469.

*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 lease of the Property. Specifically, the District desires to 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 indicates 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 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 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: 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 the Property. Specifically, the District desires to 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 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 S*EC*TION [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.]

*EC* 17474. WAIVE ENTIRE S*EC*TION [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 the *Education Code* and use an alternative procedure for the lease of the Property. Specifically, the District desires to 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* 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 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 Jefferson Union High School District owns approximately 20 acres of real property located at 699 Serramonte Blvd, Daly City, CA ("Property"). The Property is currently used for District Office operations and Adult Transition Program, and hosts various tenants, but the Property no longer meets the needs of the District. Thus, the District plans to transfer its District Office operations and Adult Transition Program to a different property.

The District's Governing Board declared the Property surplus because it no longer uses or needs the Property, and to allow District staff to pursue a lease of the Property as part of its overall plan to generate revenue to improve salaries and student programs. After complying with the surplus property procedure required by the *Education Code*, and receiving a finding by the Department of Housing and Community Development that the Property is “exempt surplus land” under Government Code section 54221(f)(1)(I), the District decided to explore leasing the Property.

*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 with the winning bidder based on the total price (i.e. lease payments) offered by the bidders. 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 of the Property through an alternative Request for Proposal (“RFP”) process. 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. This process is necessary to ensure that prospective tenants and developers will act consistently with community needs in addition to maximizing the value of the transactions to the District. For example, the District can consider the length of the lease term offered, the proposed use of the Property, and other benefits that the proposer may offer in exchange for a lease. The bid auction scenario requires the District to solicit bids for the lease of the Property through an auction process that limits the District's selection to the highest bidder or reject all bids. The District needs the ability to be flexible and work with interested parties to establish the specific terms of the lease that will provide the most benefit to the District. 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 develop an RFP seeking proposals for the lease of the Property and develop a fair and open process by which the Property is leased.

Student Population: 4490

City Type: Urban

Public Hearing Date: 2/15/2022

Public Hearing Advertised: Brown Act posting; website; posting at: ? All 6 School Sites in the District: ?City Hall cities of Brisbane, Daly City, Pacifica, Colma ? Brisbane, Pacifica and Serramonte Public Libraries

Local Board Approval Date: 2/15/2022

Community Council Reviewed By: District Advisory Council

Community Council Reviewed Date: 2/10/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Tina VanRaaphorst

Position: Chief Business Official

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Bargaining Unit Date: 02/09/2022

Name: American Federation of Teachers

Representative: Monica Casey

Title: AFT Local 1481 President

Phone: (415)867-6519

Position: Support

Comments: