

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2023 Agenda Item #W-11

## Subject

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

## Waiver Number

10-4-2023

Type of Action

Action, Consent

## Summary of the Issues

The Chino Valley Unified School District (USD) is requesting a waiver 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 sell or lease a piece of property, in a manner that best serves its schools and community, 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 for a term of August 1, 2023, through July 30, 2025, with the following conditions: 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.

## Summary of Key Issues

Under provisions of *EC* Section 33050, Chino Valley USD requests that the specified *EC* sections be waived in order to allow the district to sell a 7-acre piece of real property located south of the intersection of Soquel Canyon Parkway and Butterfield Ranch Road in the City of Chino Hills, through an RFP rather than a public bid process. This property is undeveloped land that has never been used by the district for any purpose, and has been determined by the district to be surplus to its educational needs.

The district has expressed a desire to utilize the waiver process in order to explore uses for the site that would not only maximize the district’s return, but also “enhance the neighboring community.” The statutory process has rigid bid timelines and requirements, and does not allow for consideration of any factor other than the highest bid submitted. Approval of a waiver with the conditions noted above would protect the public’s right to participate in the process while allowing the district more flexibility to explore uses aligned with community needs, even if they do not offer the highest possible remuneration. Additionally, in consultation with local real estate professionals, the district has been advised than an RFP process is more likely to attract a greater number and wider variety of prospective buyers than a bid process, likely leading to a more beneficial outcome for the district.

The waiver request was approved unanimously by the Chino Valley Board of Trustees, with no public objection. (Note: The posted minutes erroneously indicate one “no” vote, but a review of the video recording of the meeting shows unanimous approval by all five board members.)

### Demographic Information

Chino Valley USD is a suburban district serving the cities of Chino, Chino Hills, and the southwestern portion of Ontario, within San Bernardino County. It has an enrollment of 25,645 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 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:** Chino Valley Unified School District General Waiver Request 10-4-2023 (4 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 3-3-2023 | Chino Valley Unified School District | Parcel Number 1017-231-34, south of intersection of Soquel Canyon Parkway and Butterfield Ranch Road | **Requested:** August 1, 2023 to August 1, 2026  **Recommended:** August 1, 2023 to July 30, 2025 | 4/6/2023 | 4/6/2023  Public Hearing Advertised: Inland Valley Daily Bulletin, district website | California School Employees Association  Daniel Hernandez Anderson  President  3/14/2023  **Neutral**    Associated Chino Teachers  Brenda Walker  President  3/14/2023  **Neutral** | Citizens Bond Oversight Committee Committee 2/1/2023 **No Objections** |

Created by the California Department of Education July 2023

# Attachment 2: **Chino Valley Unified School District General** **Waiver Request 3-3-2023**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3667678

Waiver Number: 10-4-2023

Active Year: 2023

Date In: 4/17/2023 2:33:52 PM

Local Education Agency: Chino Valley Unified

Address: 5130 Riverside Dr.

Chino, CA 92880

Start: 8/1/2023

End: 8/1/2026

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, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *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.]

*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.

*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.

*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.

*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.

*EC* 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].

*EC* 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.]

*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.]

Outcome Rationale: The 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 the return on the sale of the District’s property bearing Assessor’s Parcel Number 1017-231-34, located south of the intersection of Soquel Canyon Parkway and Butterfield Ranch Road in the City of Chino Hills (the “Galstian Property").

The District has determined that the Galstian Property, which the District has never used, will not be needed for school purposes. Consequently, the District would like to attract potential purchasers or lessees who will not only pay maximum price for the property, but who will also enhance the surrounding neighborhood.

Based on past sales of real property in the area and the location of the property, as well as the advice of real estate professionals, the District anticipates attracting much greater interest from potential purchasers or lessees through a Request for Proposal process than a bid process.

Student Population: 25645

City Type: Small

Public Hearing Date: 4/6/2023

Public Hearing Advertised: CVUSD provided notice of a public hearing via a posted notice on the District’s website, and also by published the notice in the Inland Valley Daily Bulletin newspaper on 3/21/2023

Local Board Approval Date: 4/6/2023

Community Council Reviewed By: Measure G Citizens’ Bond Oversight Committee  
Community Council Reviewed Date: 2/1/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Gregory Stachura

Position: Assistant Superintendent

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Telephone: 909-628-1201 x1203

Bargaining Unit Date: 03/14/2023

Name: Associated Chino Teachers

Representative: Brenda Walker

Title: President

Phone: (909) 628-0713

Position: Neutral

Bargaining Unit Date: 03/14/2023

Name: CA School Employees Association - Chino 102

Representative: Daniel Hernandez

Title: CSEA Chapter President Chino 102

Phone: (909) 628-1201 ext. 1950

Position: Neutral