

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2024 AgendaItem #W-03

## Subject

Request by **three local educational agencies** to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Bear Valley Unified School District 6-8-2023
* Downey Unified School District 3-10-2023
* San Diego Unified School District 1-9-2023

## Type of Action

Action, Consent

## Summary of the Issues

The Bear Valley 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, 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.

The Downey USD is requesting to waive all of California *EC* sections 17469, 17472, 17473 and 17474, and portions of sections 17455, 17466, 17468, 17470, 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 RFP process.

The San Diego USD is requesting to waive all of California *EC* sections 17472, 17473, and 17474, and portions of sections 17455, 17466, 17468, 17469, and 17475, which will allow the district to sell a piece of property 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: that the proposal each district’s respective 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, the districts are requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

### Bear Valley USD

Bear Valley USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the lease of two connected sites located at 40940 Pennsylvania Ave, Big Bear Lake, Assessor’s Parcel Number (APNs) 0309111010000 and 0309112050000, through an RFP rather than a public bid process. The property previously housed Big Bear Elementary School, which was closed in 2021. The school was closed due to declines in enrollment, but an additional contributing factor was the age of the facility. The buildings are over 80 years old, and required significant costs for long-term improvements. Following the closure, the district has continued to use the property for administration functions such as maintenance and operations, project management, and nutrition services. However, these functions can be housed at other district sites. There has been minimal community use of the site, with the district declining requests for field and facility usage in anticipation of selling/leasing the site. The board of trustees approved the request for a waiver unanimously, and without public objection.

### Downey USD

Downey USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale of a piece of real property located at 11525 Brookshire Avenue in Downey, through an RFP rather than a public bid process. The district purchased the property in 1957 and has been leasing it for commerical use ever since. The current tenant is a medical facility. If the property were sold, they would remain tenants of the new owner. The tenant has expressed no objections to the waiver. The property has never been used by the district as a school site, or for any other educational purpose. Currently, the property is subject to a ground lease agreement that does not expire until 2060, the rental value of which has not kept up with local rental values. Additionally, the district has seen a decline in student enrollment over the past decade, and projects a continuing decline for the foreseeable future. Thus, the district has determined it has no anticipated future use for the property, which it declared surplus on June 23, 2023.

The district then offered the property to the public entities specified by *EC* 17464 and published a disposition notice in the local newspaper, but did not receive interest from, or come to an agreement with, any public entity for the disposition of the property within the required timeframe. The district held a public hearing on the waiver and the board of trustees unanimously approved the resolution for the district to seek a waiver on September 6, 2023, without objection from the public.

### San Diego USD

San Diego USD requests that the specified *EC* sections be waived in order to allow the district to sell a piece of real property located at 4080 Governor Drive in San Diego. This is an 11.88-acre site that houses Curie Elementary. Curie Elementary was built in 1963. The district is not selling the entire property, nor are they selling any facilities or land used by Curie Elementary. Located at 5205-45 Genesee Cove, the area in question totals approximately 30,000 square feet (.68 acres). An apartment complex on the adjoining property has built amenities, including building footings, parking lot space, and a dog park on that portion of the district's property. In some places, the encroachment is up to 30 feet on to Curie Elementary property. This area is a slope and has not been used by Curie Elementary. Any additional construction on the upper slope would require substantial reinforcement and retaining walls, making the whole hill unsuitable for development or student recreation. The owners of the apartment complex were recently declined for a refinance when property boundaries were examined, and the encroachment was identified. The district and property owner have determined that the best way to resolve the issue is to sell the area to the adjoining property owner, recovering the appraised value of the land for the district, and ending the boundary encroachment. The waiver request was approved unanimously by the district’s board of trustees (one trustee absent) without public objection.

**Demographic Information**

Bear Valley Unified School District is a rural school district serving the towns of Boulder Bay, Fawnskin, Big Bear City, Big Bear Lake, and Surgarloaf, in San Bernardino County. It has a population of 2,136 students.

Downey USD is an urban district located in the city of Downey, in Los Angeles County. It has a population of 22,361 students.

San Diego USD is an urban district located in the city of San Diego, in San Diego County. It has a population of 118,523 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 districts are 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 districts to maximize value from the saleor lease of the properties.

The districts have 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 (3 pages)
* **Attachment 2:** Bear Valley Unified School District General Waiver Request 6-8-2023 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Downey Unified School District General Waiver Request 3-10-2023 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** San Diego Unified School District General Waiver Request 1-9-2023 (3 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-8-2023 | Bear Valley Unified School District | 40940 Pennsylvania Ave, Big Bear Lake | **Requested:**August 28, 2023 toAugust 27, 2025**Recommended:** August 28, 2023 toAugust 26, 2025 | 8/16/2023 | 8/16/2023Public Hearing Advertised: District website, local newspaper, postings at two local post offices and public library | California School Employee Association Bonnie SouthChapter President08/09/2023**Support**Bear Valley Education AssociationJeanne GardnerPresident08/09/2023**Support** | Local Control and Accountability Plan Advisory Committee8/9/2023**No Objections** |
| 3-10-2023 | Downey Unified School District | 11525 Brookshire Avenue, Downey, CA 90241 | **Requested:**November 1, 2023 toNovember 1, 2026**Recommended:** November 1, 2023 toOctober 30, 2025 | 9/6/2023 | 9/6/2023Public Hearing Advertised: local newspaper, district website | California School Employees Association Units 1&2Marisol Alarid & John TorresPresidents10/6/2023**Support**Downey Education Association Kevin WelchPresident10/4/2023**Support** | Asset Management Committee10/18/2023**No Objections** |
| 1-9-2023 | San Diego Unified School District | 4080 Governor Drive, San Diego, Ca, 92122 | **Requested:**November 23, 2023 toNovember 23, 2025**Recommended:** November 23, 2023 toNovember 21, 2025 | 7/25/2023 | 7/25/2023 Public Hearing Advertised: District website, posted at Education Center and school sites | Administrators Association of San DiegoDonis CoronelExecutive Director7/18/2023**Neutral**Office Technical and Business ServicesDawn BasquesPresident8/2/2023**Neutral**Operations Support ServicesJose SanchezLabor Relations Representative8/11/2023**Neutral**Paraeducators (PARA)Issel MartinezPresident**Neutral**San Diego Educators AssociationKyle WeinbergPresident**Neutral** | Outdoor Physical Activities Committee 8/28/2023 **No Objections** |

Created by the California Department of Education

November 2023

# Attachment 2: **Bear Valley Unified School District General** **Waiver Request 6-8-2023**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3667637

Waiver Number: 6-8-2023

Active Year: 2023

Date In: 8/28/2023 10:30:02 AM

Local Education Agency: Bear Valley Unified

Address: 42271 Moonridge Rd.

Big Bear Lake, CA 92315

Start: 8/28/2023

End: 8/27/2025

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17466, 17469, 17472-17475

Ed Code Authority: 33050

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

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].

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].

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.]

17473. (all)

17474. (all)

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 Bear Valley 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 real property located at 40940 Pennsylvania Ave, Big Bear Lake, County of San Bernardino, California, APN 0309111010000 and APN 0309112050000 (the “Property”), in a manner that best serves our schools and community. The District would like to offer the Property 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 District will work closely with consultants to ensure that the process by which the property is sold or 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.

Student Population: 2136

City Type: Small

Public Hearing Date: 8/16/2023

Public Hearing Advertised: Advertised in the local newspaper and posted hearing notice at the two local post offices and the local library.

Local Board Approval Date: 8/16/2023

Community Council Reviewed By: Local Control and Accountability Plan (LCAP) Advisory Committee

Community Council Reviewed Date: 8/9/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Linda Rosado

Position: Executive Director, Business Services/Classified

E-mail: linda\_rosado@bearvalleyusd.org

Telephone: 909-866-4631 x1227

Bargaining Unit Date: 08/09/2023
Name: Bear Valley Education Association
Representative: Jeanne Gardner
Title: BVEA President
Phone: 909-633-4326
Position: Support

Bargaining Unit Date: 08/09/2023
Name: California School Employee Association
Representative: Bonnie South
Title: CSEA President
Phone: 909-273-4904
Position: Support

# Attachment 3: **Downey Unified School District General** **Waiver Request 3-10-2023**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1964451

Waiver Number: 3-10-2023

Active Year: 2023

Date In: 10/17/2023 10:39:26 AM

Local Education Agency: Downey Unified

Address: 11627 Brookshire Ave.

Downey, CA 90241

Start: 11/1/2023

End: 11/1/2026

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17464, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475

Ed Code Authority: 33050

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

Outcome Rationale: The Downey Unified School District (“District”) owns 11525 Brookshire Avenue & 11500 Dolan Street Downey, California 90241 (“Property”). The District purchased the Property in 1957 and began leasing it for commercial use in 1969. The Property has never been used as a school site, District administrative facility, or for educational purposes. The Property is subject to a ground lease agreement that does not expire until 2060. The rental income the District receives from the Property has not kept up with the Property’s fair market rental value. Therefore, the District is not receiving the full benefit of the Property’s current fair market rental value due to the lease in place.

Overall District enrollment has declined over the last ten years by 2.67% and is projected to continue to decline over the next ten years. State-wide enrollment over the same period shows an overall decline in public school enrollment with a similar rate of decline forecasted the next ten years. Current District enrollment data indicates surplus capacity in District schools meet future enrollment projections. Empirical data demonstrates that the District does not need additional school sites, educational facilities, administrative facilities, or other non-educational facilities at this time. In the event trends shift and student enrollment begins to grow in the future, the District has available capacity within its current schools. Thus, the District convened an Asset Management Advisory Committee (“Asset Management Committee”) to review and consider the Property and information to make a recommendation regarding the disposition of the Property.

After receiving the Asset Management Committee’s Findings and Recommendations Report (“Report”) recommending that the Property be declared surplus, the District Board of Education (“Board”) deemed the Property surplus on June 13, 2023, and directed that it be offered to public agencies for sale pursuant to the applicable statutes.

Pursuant to *Education Code* section 17464, on June 16, 2023, the District offered the Property to the specified public entities and published the disposition notice in the newspaper on June 16, 2023; June 23, 2023; and June 30, 2023, but the District did not receive interest from or come to an agreement with any public entity for the disposition/sale of the Property within the required timeframe.

The District held a public hearing on the waiver and the Board approved the resolution for the district to seek a waiver on September 6, 2023.

The District is requesting a waiver of certain surplus property statutes to forego the public bidding process to list the Property on the open market with the assistance of a real estate agent or broker, develop and issue a Request for Qualifications and Request for Proposals, and directly negotiate with proposers for best and final offers (“Alternative Disposition Process”). Due to the long-term lease in place, this would allow the District to directly market to the type of purchasers that would be interested in this type of property and allow the District to maximize its return on the sale of the Property to the greatest extent possible. The District will work to develop a strategic plan to solicit offers from serious entities, and any sell or lease will be approved by the District’s Board and in a public meeting.

Student Population: 22361

City Type: Urban

Public Hearing Date: 9/6/2023

Public Hearing Advertised: Newspaper Publication and District website

Local Board Approval Date: 9/6/2023

Community Council Reviewed By: Asset Management Committee

Community Council Reviewed Date: 10/18/2022

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Robert McEntire

Position: Associate Superintendent Business Services

E-mail: rmcentire@dusd.net

Telephone: 562-241-6520

Bargaining Unit Date: 10/06/2023

Name: California School Employees Associate #248 (Unit 1

Representative: Marisol Alarid

Title: President

Phone: 800-632-2128

Position: Support

Bargaining Unit Date: 10/06/2023

Name: California School Employees Associate #746 (Unit 2

Representative: John Torres

Title: President

Phone: 800-632-2128

Position: Support

Bargaining Unit Date: 10/04/2023

Name: Downey Education Association

Representative: Kevin Welch

Title: President

Phone: 562-868-6251

Position: Neutral

# Attachment 4: **San Diego Unified School District General** **Waiver Request 1-9-2023**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768338

Waiver Number: 1-9-2023

Active Year: 2023

Date In: 9/1/2023 8:27:42 AM

Local Education Agency: San Diego Unified

Address: 4100 Normal St.

San Diego, CA 92103

Start: 11/23/2023

End: 11/23/2025

Waiver Renewal: No

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: All of 17472, 17473, 17474; portions of 17455, 17466, 17468, 17469, 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: See Exhibit A (attached)

Outcome Rationale: See Exhibit B (attached)

Student Population: 118523

City Type: Urban

Public Hearing Date: 7/25/2023

Public Hearing Advertised: In accordance with the Brown Act and published on San Diego Unified School District website, posted at the Education Center and other locations. (see BOE Resolution attachment)

Local Board Approval Date: 7/25/2023

Community Council Reviewed By: Outdoor Physical Activities Committee (OPAC) (meeting minutes attached)

Community Council Reviewed Date: 8/28/2023

Community Council Objection: NoAudit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Gene Fuller

Position: Director, Real Estate

E-mail: gfuller@sandi.net

Telephone: 619-278-6724

Fax: 858-541-7854

Bargaining Unit Date: 07/18/2023
Name: Administrators Association of San Diego (AASD)
Representative: Donis Coronel
Title: Executive Director
Phone: 619.295.2118
Position: Neutral

Bargaining Unit Date: 08/02/2023
Name: Office Technical and Business Services (OTBS)
Representative: Dawn Basques
Title: President
Phone: 858.458.0300
Position: Neutral

Bargaining Unit Date: 08/11/2023
Name: Operations Support Services (OSS)
Representative: Jose Sanchez
Title: Labor Relations Representative
Phone: 858.202.2627
Position: Neutral

Bargaining Unit Date: 08/02/2023
Name: Paraeducators (PARA)
Representative: Issel Martinez
Title: President
Phone: 858.458.0300
Position: Neutral

Bargaining Unit Date: 07/26/2023
Name: San Diego Educators Association (SDEA)
Representative: Kyle Weinberg
Title: President
Phone: 619.283.4411
Position: Neutral

Bargaining Unit Date: 07/26/2023
Name: San Diego Schools Police Officers' Assoc. (POA)
Representative: Jon Cooksey
Title: Vice President
Phone: 619.725.7280
Position: Neutral