

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2024 Agenda Item #W-06

## Subject

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

## Waiver Number

## 6-5-2024

## Type of Action

Action, Consent

## Summary of the Issues

The Fremont Unified School District (USD) is requesting a waiver of California *Education Code* (*EC*) sections, 17473, 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, 17472, 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 with the following condition:

## The proposal that Fremont 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.

Approval of this waiver only applies to aforementioned sections and provisions of the Education Code from which Fremont USD seeks a waiver and does not extend to any other legal requirements that may be applicable to the sale or lease of property.

## Summary of Key Issues

Under provisions of *EC* Section 33050, Fremont USD requests that the specified *EC* sections be waived in order to allow the district to sell a 2.62-acre parcel, located at 5301 Curtis Street in Fremont, through an RFP rather than a public bid process. This property is commonly known locally as the “Marshall Property.” This property previously served as the location for Marshall Elementary School. The school was closed in 2000, and the site was leased for other uses from 2004 to 2018. It has been vacant since 2018. At that time, the district began exploring use of the site as a consolidated Spanish Dual Immersion/Mandarin Immersion Program (SDI/MIP). In preparation for this possibility, the site was surveyed, and a high-pressure Pacific Gas & Electric natural gas transmission pipeline was discovered. This discovery rendered the site inappropriate not just for the planned SDI/MIP program, but for any educational purposes, pursuant to EC Section 17213. Based upon this discovery, the district declared the property surplus on April 21, 2021, as recommended by its 7-11 Facilities Advisory Committee.

On June 15, 2022, the District’s Board approved an application to the State Board of Education (SBE) for a waiver of portions of the statutory bid process for selling surplus property without any “no” votes or objections from the public. The SBE approved this waiver, with conditions, on November 2, 2022, effective from September 28, 2022, to September 26, 2024.

Due to the forthcoming expiration of the waiver, the Board is requesting a renewal from the SBE to continue soliciting proposals for selling the Marshall Property via an RFP process. Because of the pipeline, the site presents challenges when seeking a suitable buyer, which is why the district needs additional time. District staff have also determined that the flexibility of the RFP process is in the district's best interest in selling such a unique property. The Board unanimously approved the waiver renewal, following a public hearing on May 8, 2024, without public objection.

### Demographic Information

Fremont USD is an urban district serving the city of Fremont, within Alameda County. It has an enrollment of 33,107 students.

**Because these are general waivers, if the State Board of Education (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. The SBE approved a property waiver for this districtin November of 2022 (Waiver Number: 4-7-2022).

## 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 (2 pages)
* **Attachment 2:** Fremont Unified School District General Waiver Request 6-5-2024 (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** | **Properties** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-5-2024 | Fremont Unified School District | 5301 Curtis Street Fremont, CA 94539 | **Requested:** Start: 9/25/2024  End: 9/30/2026  **Recommended:** Start: 9/25/2024  End: 9/23/2026 | 5/8/2024 | 4/26/2024  Notice in Fremont Unified School District Website | California School Employees Association Tammie Solis  President  04/05/2024  Neutral  Fremont Schools Management Association  Heidi McFadden President  04/05/2024  Neutral  Fremont Unified District Teacher Association  Victoria Chon  President  04/05/2024  Neutral  Service Employee International Union  Michele Hartmangruber  Chapter President  04/05/2024  Neutral | District Surplus Property Advisory Committee 4/16/2024 **No Objections** |

Created by the California Department of Education

September 2024

# Attachment 2: Fremont **Unified School District General** **Waiver Request** 6-5-2024

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0161176

Waiver Number: 6-5-2024

Active Year: 2024

Date In: 5/17/2024 4:15:22 PM

Local Education Agency: Fremont Unified

Address: 4210 Technology Dr.

Fremont, CA 94538

Start: 9/25/2024

End: 9/30/2026

Waiver Renewal: Yes

Previous Waiver Number: 4-7-2022-W-03

Previous SBE Approval Date: 11/2/2022

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: *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 bracketed language is requested to be waived since the District is asking that several provisions of the article be waived and consequently, the sale will not be made in the manner provided in Article 4.

*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: District requests the bracketed language be waived so that District will not be required to receive sealed proposals or oral bids at a public meeting, allowing the District to directly negotiate with interested purchasers of the Property with the most flexibility for pricing, and other terms to present to the governing board for consideration. Since the District cannot predict in advance the timing of negotiations, it cannot at the time of adopting the resolution know when proposals must be brought back to the 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 all proposals to the governing board to consider the approval of an agreement.

*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 bracketed language is to be waived because the District is requesting that the requirement of opening sealed bids and concurrently receiving oral bids during a Board meeting be waived, allowing the District to negotiate directly with interested purchasers through the 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 bracketed language to be waived assumes the Board would be holding a meeting to open sealed bids and receive oral bids for purchase of the property. Such a requirement is requested to be removed pursuant to the language requested to be stricken in *Education Code* section 17466. The posting of the resolution and publication of the notice will still be required, but will not be tied to a fixed date for a Board meeting to open sealed bids and receive oral bids.

*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 the Board would be setting a specific meeting to open sealed bids and receive oral bids. However, such requirements are requested be removed pursuant to the language stricken within *Education Code* section 17466. Notice of to the former owner will still be required, but will not be tied to a fixed date for a Board meeting to open sealed bids and receive oral bids.

*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: The bracketed language is to be waived because the District is requesting that the requirement of opening sealed bids and receiving oral bids during an identified meeting be waived, allowing the District to directly negotiate with interested purchasers of the Property through the RFP process. The terms and conditions will not be specified in the Board’s resolution of intention to sell or to lease the property, as that requirement is requested to be stricken from *Education Code* section 17466.

*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 entire bracketed section is to be waived because the District will not be accepting oral bids, but desires to directly negotiate with a potential purchaser of the Property through the RFP process.

*Education Code* § 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: This entire bracketed section is to be waived because the District will not be accepting oral bids for the purchase of the Property, but desires to directly negotiate with a potential purchaser of the Property through the RFP process.

*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: The bracketed language requested to be waived would remove the requirement for the Board to accept a proposal at the same meeting it is examined, or at a subsequent adjourned session within 10 days. Instead, this modification would allow the Board to consider proposals received and direct further negotiation. The statute, as modified, still requires acceptance of the contract to purchase the Property at a Board meeting.

Outcome Rationale: On April 21, 2021, the District Board declared 5301 Curtis Drive, in Fremont (“Property”) as surplus, and on June 15, 2022, the Board approved and authorized the application to the SBE requesting a waiver of specific portions of the *Education Code* relating to the sale or lease of surplus property at *Education Code* section 17455, et seq. At its meeting on November 2, 2022, the SBE approved the District’s waiver request, subject to specified conditions, for the period beginning September 28, 2022, and ending September 26, 2024.

The District seeks to renew its SBE waiver, which allows the District to consider all proposals from the public through an RFP process, directly negotiate with potential buyers, obtain the best price for the transaction, and negotiate other terms most beneficial to the District. While the District is currently considering proposals from potential buyers and anticipates entering into negotiations for a purchase and sale agreement based on proposals received to date, it is likely that such purchase and sale agreement will require that, as a condition for closing, the buyer has received certain entitlements from the City to develop the property.

Accordingly, in the event negotiations for a purchase and sale agreement fail or the sale of the Property does not proceed to closing based on a buyer’s conditions for certain development entitlements, the District desires to maintain the flexibility of its SBE waiver through a renewed waiver. Without the waiver, the District would be prohibited from releasing a new RFP, accepting proposals, and negotiating with potential buyers; instead, it will be restricted to selecting the highest priced bid pursuant to the statutory process due to its current waiver expiring September 26, 2024.

Student Population: 33107

City Type: Urban

Public Hearing Date: 5/8/2024

Public Hearing Advertised: District posted a notice of the public hearing, inviting public testimony, on its website with the time, date, location, and subject of the hearing. The regular meeting was noticed per the Brown Act.

Local Board Approval Date: 5/8/2024

Community Council Reviewed By: Facilities Advisory Committee

Community Council Reviewed Date: 4/16/2024

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Christine Vana

Position: Attorney for District, Dannis Woliver Kelley

E-mail: [cvana@dwkesq.com](mailto:cvana@dwkesq.com)

Telephone: 916-978-4040

Fax: 510-438-9254

Bargaining Unit Date: 04/05/2024

Name: California School Employees Association

Representative: Tammie Solis

Title: Chapter President

Phone: [tsolis@fusdk12.net](mailto:tsolis@fusdk12.net)

Position: Neutral

Bargaining Unit Date: 04/05/2024

Name: Fremont Schools Management Association

Representative: Heidi McFadden

Title: FSMA President

Phone: [hmcfadden@fusdk12.net](mailto:hmcfadden@fusdk12.net)

Position: Neutral

Bargaining Unit Date: 04/05/2024

Name: Fremont Unified District Teacher Association

Representative: Victoria Chon

Title: FUDTA President

Phone: [president@fudta.org](mailto:president@fudta.org)

Position: Neutral

Bargaining Unit Date: 04/05/2024

Name: Service Employee International Union

Representative: Michele Hartmangruber

Title: Chapter President

Phone: [mhartmangruber@fusdk12.net](mailto:mhartmangruber@fusdk12.net)

Position: Neutral