

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2024 Agenda Item #W-08

## Subject

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

## Waiver Number

12-2-2024

## Type of Action

Action, Consent

## Summary of the Issues

The Twin Rivers Unified School District (USD) is requesting a waiver of California *Education Code* (*EC*) sections 17472, 17473, and 17474, and portions of sections 17455, 17466, 17468, 17469, 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 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 the Twin Rivers 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 Twin Rivers 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, Twin Rivers USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale of two adjacent, undeveloped pieces of real property, collectively known as “the Village 13 property” (Village 13):

1. Assessor Parcel Number 201-0320-018,11.176 acres, in the Panhandle Development Area, with a street address of 5921 East Levee Road; and

2. The adjacent parcel,10.560 acres, Number 201-0320-019, no street address.

Currently, Village 13 is not being used by Twin Rivers USD, there are no community groups authorized to use Village 13, and the district does not need use of these parcels as they have been declared surplus by the 7-11 Committee and affirmed so by the governing board. Twin Rivers USD wishes to sell Village 13 in a manner that will provide the district with the most benefit and wishes to consider various offers in order to identify which is in the best interest of the district, when compared based on various factors, including but not limited to, price.

The State Board of Education (SBE) approved the district’s original waiver request for this property on July 13, 2022, thereby granting a waiver of specified statutory surplus property procedures for the period of July 13, 2022 through July 11, 2024.

After SBE’s July 2022 approval of the original waiver in July 2022, the Sacramento Area Flood Control Agency (SAFCA) used eminent domain to acquire part of the property. In lieu of an eminent domain action, the district and SAFCA settled, with SAFCA agreeing to pay for approximately 3.107 acres and a temporary construction easement over 0.464 acres. The district preferred to resolve the SAFCA matter before selling the property. The district's Board of Trustees approved the settlement on January 23, 2024.

With the SAFCA issue now resolved, the district aims to sell the remaining property in a way that maximizes benefits, but will need additional time to do so. The request for a waiver that would extend the time to waive specified statutory surplus property procedural requirements was approved unanimously by the district’s Board of Trustees without public objection.

### Demographic Information

The Twin Rivers USD was formed through the unification of several other Sacramento County school districts in 2007. Because of the nature of the districts being unified, Twin Rivers USD contains both suburban and rural areas, and serves the communities of Foothill Farms, North Highlands, and Rio Linda. It has a student population of 41,467.

**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 July of 2022 (Waiver Number: 6-4-2022-W-17).

## 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:** Twin Rivers Unified School District General Waiver Request 12-2-2024 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 12-2-2024 | Twin Rivers Unified School District | Assessor Parcel Number 201-0320-018 located at 5921 East Levee Road, Sacramento, CA 95835  Assessor Parcel Number 201-0320-019 (adjacent) | **Requested:**  Start: 5/9/2024  End: 5/9/2026  **Recommended:**  Start: 7/11/2024  End: 7/9/2026 | 1/23/2024 | 1/23/2024  Notice in local newspapers *(Sacramento Bee)* on 2/1/24 2/12/23 | California School Employees Association Vicky Gunter, President 4/12/2022 **Neutral**  Twin Rivers School Police Association Cory Yen, President  4/7/2022  **Support**  Twin Rivers United Educators Rebecca LeDoux, President  2/24/2022  **Neutral** | District Surplus Property Advisory Committee 12/20/2023  Communication with 7-11 Committee Members re renewed Waiver [all dated December 20, 2023] and responses.   * J. DeWitt – **Support** * S. Uhl – **Support** * J. Sample - **Support** |

Created by the California Department of Education

June 2024

# Attachment 2: Twin Rivers Unified School District General Waiver Request 12-2-2024

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3476505

Waiver Number: 12-2-2024

Active Year: 2024

Date In: 2/12/2024 4:41:50 PM

Local Education Agency: Twin Rivers Unified

Address: 5115 Dudley Blvd.

McClellan, CA 95652

Start: 5/9/2024

End: 5/9/2026

Waiver Renewal: Yes

Previous Waiver Number: #6-4-2022-W-17

Previous SBE Approval Date: 7/13/2022

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17466, 17468, 17469, 17470, 17472 (all), 17473 (all), 17474 (all), 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: The Twin Rivers Unified School District desires to waive the following sections and portions of the *Education Code* (“*EC*”). 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 language indicating that the sale of the property is to be made in the manner provided by this article should be waived, because the District is asking that several provisions of the article be waived and consequently, the sale or lease will not be made in the manner provided in Article 4.

*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 stricken language to be waived provides for the governing board to state a minimum price and the terms upon which the property will be sold or leased. The stricken language also would require specification of a meeting where proposals would be received and considered. The District is requesting that the requirement of stating a minimum price and terms be waived, so that it can receive as many offers as possible without making assumptions about the minimum price or the terms of the sale that could unnecessarily limit the possible range of solutions and proposals. Also, as the District cannot predict in advance the timing of negotiations with interested purchasers, it cannot at the time of adopting the resolution contemplated by this Section 17466, know when proposals must be brought back to the governing board for consideration. The District intends to review a number of proposals for the purchase of the property, and bring all proposals received to the governing board when necessary to consider the approval of a sale.

*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 stricken language to be waived provides for the District to receive sealed and oral bids to purchase or lease the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed bids and oral bidding to purchase or lease the property be waived, allowing the District to use a proposals process and negotiate the sale or lease of the property with a qualified 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: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase 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 provide notice of its adoption of a resolution of intent to sell the property, but the posting of that resolution and notice in a newspaper would no longer be tied to an established date to receive proposals.

*EC* § 17470. (a) The governing board of a school district that intends to sell or lease 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 that the Board would be setting a specific meeting to receive proposals for the purchase or 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 stricken language to be waived provides for the District to receive and open sealed proposals and oral bids to purchase or lease 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 or lease the property be waived, allowing the District to use a proposals process and negotiate the sale or lease of the property with a qualified purchaser. This will allow the District to receive and consider a number of proposals and maximize the District’s ability to negotiate the most favorable transaction terms.

*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.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

*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.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting 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: Modification of the section would remove the requirement that the governing board accept a proposal at the same meeting received, and would instead allow the governing board to consider proposals received and, as desired and appropriate, direct further negotiation, and complete the transaction at the time most beneficial to the District.

Outcome Rationale: The Twin Rivers Unified School District (“District”) owns the parcels of real property located in the Panhandle Development Area, identified by Assessor Parcel Numbers 201-0320-018 and 201-0320-019, which are commonly known as the Village 13 Property referred to herein as the “Property”. Currently, the Property is not being used by the District, there are no community groups authorized to use the Property, and the District does not need use of the Property as it has been declared surplus.

The State Board of Education approved the District’s original waiver request for the Property on July 13, 2022, thereby granting a waiver of specified statutory surplus property procedures for the period of July 13,2022 through July 11, 2024.

Since approval of the original waiver, the Sacramento Area Flood Control Agency (“SAFCA”) exercised its power of eminent domain to take a portion of Property. The District and SAFCA entered into a settlement agreement where, in lieu of a full eminent domain action, SAFCA agreed to pay the District for approximately 3.107 acres of the Property and a temporary construction easement over approximately 0.464 acres of the remaining Property. The District preferred to negotiate and complete the SAFCA taking procedures prior to pursuing sale of the Property. The District’s Board of Trustees (“Board”) approved the settlement agreement between the District and SAFCA on January 23, 2024.

With the SAFCA taking now complete, the District wishes to sell the remaining Property in a manner that will provide the District with the most benefit. The District wishes to consider various offers in order to identify which is in the best interest of the District, when compared, based on various factors, including but not limited to, proposed purchase price.

The District is seeking a renewed waiver of certain portions of the *Education Code* so it can pursue a sale through an informal proposals process. This process will allow the District to publicly solicit and evaluate competitive offers and select the offer that is in the District’s best interest. District staff, in consultation with legal counsel, will review the offers and determine which offer(s) provides the most beneficial terms to the District.

The District requests that it be allowed to continue the process of selling the Property in accordance with the original waiver. A renewal of the original waiver of the statutory provisions will allow the District to complete the sale process and maximize the value of the Property with the flexibility described above. This flexibility is particularly important for this Property given the unique status of the Panhandle Development Area in which the Property is located – specifically, the Panhandle Development Area is undergoing rapid development and is impacted by several environmental issues. In light of all of this, the District believes that a sophisticated buyer should purchase this Property and wishes to have the flexibility obtained through a waiver in order to solicit and negotiate with such an entity.

The District has developed a strategic plan for soliciting offers for the Property and is working closely with legal counsel to seek offers for the purchase of the Property and to develop a process to sell the Property in a fair and open manner. The District is requesting a renewed waiver for the term of 2 years in order to have the ability to complete a sale and close escrow on a purchase that will likely take years to complete. However, the District is open to a shorter term waiver, with subsequent renewal submissions if necessary, if such shorter term is found more appropriate.

Student Population: 24435

City Type: Urban

Public Hearing Date: 1/23/2024

Public Hearing Advertised: Notice of the hearing was published in the Sacramento Bee, a local publication.

Local Board Approval Date: 1/23/2024

Community Council Reviewed By: Surplus Property Advisory Committee (7-11)

Community Council Reviewed Date: 12/20/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Cynthia Smith

Position: Legal Counsel

E-mail: [csmith@f3law.com](mailto:csmith@f3law.com)

Telephone: 916-604-3072

Bargaining Unit Date: 12/20/2023

Name: California School Employees Association

Representative: Vicky Gunter

Title: CSEA Chapter 1717 President

Phone: 916-566-1600

Position: Neutral

Bargaining Unit Date: 12/20/2023

Name: Twin Rivers School Police Association

Representative: Cory Yen

Title: President

Phone: 844-280-1188

Position: Neutral

Bargaining Unit Date: 12/20/2023

Name: Twin Rivers United Educators

Representative: Rebecca LeDoux

Title: President

Phone: 916-648-9791

Position: Neutral