

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2021 AgendaItem #W-03

## Subject

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

## Waiver Numbers

* Rim of the World Unified School District: 6-9-2020
* Rim of the World Unified School District: 7-9-2020

## Type of Action

Action, Consent

## Summary of the Issues

The Rim of the World Unified School District (Rim of the World USD) is requesting to waive all of California *EC* sections 17473 and 17474, and portions of sections 17455, 17466, 17469, 17472, and 17475, which will allow the district to maximize the return on the sale or lease of two pieces of property through the RFP process, maximizing the benefit from the sale or lease.

## 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 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, the district is requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

Rim of the World USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale or lease of two pieces of real property, one located at North Seeley Drive at Nob Place in Crestline (known as Crestline Elementary) and the other located at 27315 North Bay Road in Blue Jay. The district seeks to sell or lease the properties in a manner that best serves its schools and community. The Crestline property is vacant land and has never been used for any district purposes and the Blue Jay property was the formerly the district’s administrative building site. The district has determined that these sites are no longer needed for school purposes and hopes to attract potential purchasers or lessees who will enhance the surrounding neighborhoods.

### Demographic Information

Rim of the World USD has a student population of 2,925 and is located in San Bernardino County.

**Because this is a general waiver, if the 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 sale or lease of surplus property.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the district to maximize revenue from the sale or lease of the properties.

The district has 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 (1 page)
* **Attachment 2:** Rim of the World Unified School District General Waiver Request 6-9-2020 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Rim of the World Unified School District General Waiver Request 7-9-2020 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)

## Attachment 1: Summary Table

## California *EC* Section 17455 et seq.

| **Waiver Numbers** | **District** | **Properties** | **Periods of Request** | **Local Board Approval Dates** | **Public Hearing Dates** | **Bargaining Unit Representatives** | **Advisory Committees Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-9-2020and7-9-2020 | Rim of the World Unified School District | North Seeley Drive at Nob Place in Crestline, CA 92325, known generally as Crestline Elementary.27315 North Bay Road in Blue Jay, CA 92317, formerly the district’s administrative building site. | **Requested:**September 10, 2020 to September 10, 2022**Recommended:**January 14, 2021 to September 10, 2022 | 9/10/2020 | 9/10/2020Public Hearing Advertised: Notice published on August 20, 27, and September 3, 2020 in the Mountain News and The Alpine Mountaineer. Also posted at district office and on the website, with notices sent to all school sites. | California School Employees AssociationSuzanne Grow, President8/20/2020**Support**Rim Teachers AssociationMark Bear, President8/18/2020**Support** | District Advisory Committee8/27/2020**No Objections** |

Created by the California Department of Education

November 2020

## Attachment 2: **Rim of the World Unified School District General** **Waiver Request 6-9-2020**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3667868

Waiver Number: 6-9-2020

Active Year: 2020

Date In: 9/23/2020 10:18:47 AM

Local Education Agency: Rim of the World Unified

Address: 27315 North Bay Rd.

Blue Jay, CA 92352

Start: 9/10/2020

End: 9/10/2022

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] [17473] [17474] [17475]

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Rim of the World 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 Rim of the World 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 one of its sites 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 buyers. The article referenced by *Education Code* Section 17455 consists of sections 17455 through 17484, which contain provisions regarding the sale or lease of real property that are inconsistent with the manner in which the District hopes to market the property.

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.

*EC* 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].

Rationale: The language to be waived provides for a minimum price or rental and requires sealed proposals to purchase or lease the property. This requirement restricts the District’s flexibility in negotiating price, payments, and other terms that may yield greater economic and other benefits to the District than a sealed bid process.

*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: Since 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 section 17469.

*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: With a waiver of the requirement that sealed proposals be received, and that the highest bidder be awarded the contract, the District will be able to sell or lease the property to the party that presents the most favorable proposal to the District. The Board would, therefore, be able to sell or lease to the party submitting the proposal that best meets the District’s needs. By removing the requirement that an oral bid be accepted, the District would be able to determine what constitutes the most desirable bid.

*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 District asks that this entire section be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids in addition to sealed 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 District asks that this entire section 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: Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in disposing of the property. The District will ensure a public process whereby the reasons for the determination of the most desirable proposal is shared openly. Prior to the decision to sell or lease a site, a Property Advisory Committee, whose purpose is to advise the District’s Governing Board in the development of District-wide policies and procedures governing the use or disposition of school buildings, space, or property which is not used for school purposes, establishes a priority list of use of surplus space and real property, provides for hearings of community input on acceptable uses of space and real property, and makes a recommendation to the Board regarding the uses of surplus space and real property. (See, *Ed. Code*, § 17388.)

Outcome Rationale: The Rim of the World Unified School 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 its return on the sale or lease of the vacant land at Valley of Enchantment, located at North Seeley drive at Nob Place, Crestline, known generally as Crestline Elementary (“Property”). The District has determined that this site is no longer needed for school purposes. It is the desire of the District 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, the District anticipates attracting much greater interest from potential purchasers or lessees through a Request for Proposal process than a bid process.

Student Population: 2,925

City Type: Rural

Public Hearing Date: 9/10/2020

Public Hearing Advertised: Notice in a newspaper on August 20, 27, and September 3, 2020 in the Mountain News and The Alpine Mountaineer

Local Board Approval Date: 9/10/2020

Community Council Reviewed By: District Advisory Committee

Community Council Reviewed Date: 8/27/2020

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jenny Haberlin

Position: Chief Business Official

E-mail: [jenny\_haberlin@rimsd.k12.ca.us](jenny_haberlin%40rimsd.k12.ca.us)

Telephone: 909-336-4140

Bargaining Unit Date: 8/20/2020

Name: California School Employees Association

Representative: Suzanne Grow

Title: President

Phone: 909-589-0396

Position: Support

Bargaining Unit Date: 8/18/2020

Name: Rim Teachers Association

Representative: Mark Bear

Title: President

Phone: 909-336-0360

Position: Support

## Attachment 3: **Rim of the World Unified School District General** **Waiver Request 7-9-2020**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3667868

Waiver Number: 7-9-2020

Active Year: 2020

Date In: 9/23/2020 10:26:04 AM

Local Education Agency: Rim of the World Unified

Address: 27315 North Bay Rd.

Blue Jay, CA 92352

Start: 9/10/2020

End: 9/10/2022

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

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Rationale: The Rim of the World 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 one of its sites 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 buyers. The article referenced by *Education Code* Section 17455 consists of sections 17455 through 17484, which contain provisions regarding the sale or lease of real property that are inconsistent with the manner in which the District hopes to market the property.

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Rationale: Since 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 section 17469.

*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.]

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*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.]

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Rationale: Rather than specifying a certain number of days or a timeframe, the District seeks flexibility in disposing of the property. The District will ensure a public process whereby the reasons for the determination of the most desirable proposal is shared openly. Prior to the decision to sell or lease a site, a Property Advisory Committee, whose purpose is to advise the District’s Governing Board in the development of District-wide policies and procedures governing the use or disposition of school buildings, space, or property which is not used for school purposes, establishes a priority list of use of surplus space and real property, provides for hearings of community input on acceptable uses of space and real property, and makes a recommendation to the Board regarding the uses of surplus space and real property. (See, *Ed. Code*, § 17388.)

Outcome Rationale: The Rim of the World Unified School 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 its return on the sale or lease of the District’s administrative building site, located at 27315 North Bay Road, Blue Jay, California 92317. The District has determined that this site is no longer needed for school purposes. It is the desire of the District 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, the District anticipates attracting much greater interest from potential purchasers or lessees through a Request for Proposal process than a bid process.

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Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jenny Haberlin

Position: Chief Business Official

E-mail: [jenny\_haberlin@rimsd.k12.ca.us](jenny_haberlin%40rimsd.k12.ca.us)

Telephone: 909-336-4140

Bargaining Unit Date: 8/20/2020

Name: California School Employees Association

Representative: Suzanne Grow

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Phone: 909-589-0396

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Bargaining Unit Date: 8/18/2020

Name: Rim Teachers Association

Representative: Mark Bear

Title: President

Phone: 909-336-0360

Position: Support