

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education May 2023 AgendaItem #W-07

## Subject

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

## Waiver Number

1-2-2023

## Type of Action

Action, Consent

## Summary of the Issues

The Oceanside Unified School District (USD) is requesting a renewal of a previously granted 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 for a term of July 13, 2023 through May 17, 2025, with the following conditions: that the proposal the district’s governing board determines to be the most desirable 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, Oceanside USD requests that the specified *EC* sections be waived in order to allow the district to finalize the sale of a 14-acre piece of real property located at 4991 Macario Drive, Oceanside, CA 92057, which formally housed the Pacifica Elementary School, through an RFP rather than a public bid process. The district closed the site on July 1, 2007.

The State Board of Education (SBE) previously approved a waiver in July 2021, Item W-08, for the same property. The site was closed due to declining enrollment throughout the district, and all buildings on the site were demolished, leaving the district with no authorized uses for the site. That waiver expires on July 13, 2023. A renewal of the original waiver of the statutory provisions will allow the district to complete the sale process. Since approval of the previous waiver, the district developed a strategic plan for advertising and marketing the site, worked closely with legal counsel and a broker to seek proposals for the purchase of the site, and developed a public process for the sale. As a result, the district received numerous proposals and selected the one that offered maximum benefit to the district. However, given the complexity of the sale, including a two-year escrow period, the district requires additional time to finalize the sale of the site.

### Demographic Information

Oceanside USD is an urban district located in the city of Oceanside, within San Diego County. It has an enrollment of 15,971 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. The district has a previously approved waiver from the July 2021 SBE meeting (Waiver 19-2-2021, Item W-08, <https://www.cde.ca.gov/be/ag/ag/yr21/documents/jul21w08.docx>), which expires on July 13, 2023.

## 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:** Oceanside Unified School District General Waiver Request
1-2-2023 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-2-2023 | Oceanside Unified School District | 4991 Macario Drive, Oceanside, CA 92057 Pacifica Elementary School | **Requested:**May 17, 2023 toMay 17, 2025**Recommended:** July 13, 2023 toMay 17, 2025 | 1/17/2023 | 1/17/2023Public Hearing Advertised: local newspaper, district website  | California School Employees AssociationDora JaramiloPresident1/24/2023**Neutral** Oceanside Teachers AssociationTiffany Cooper-OrtegaPresident1/18/2023**Neutral** | District Surplus Property Advisory Committee1/3/2022**No Objections** |

Created by the California Department of Education

March 2023

# Attachment 2: Oceanside Unified School District General Waiver Request 1-2-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3773569

Waiver Number: 1-2-2023

Active Year: 2023

Date In: 2/2/2023 3:27:51 PM

Local Education Agency: Oceanside Unified

Address: 2111 Mission Ave.

Oceanside, CA 92058

Start: 5/17/2023

End: 5/17/2025

Waiver Renewal: Yes

Previous Waiver Number: 19-2-2021-W-08

Previous SBE Approval Date: 7/21/2021

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 Oceanside 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 original waiver of the requirement to state a minimum price and terms be renewed, because it has already publicized the sale and solicited proposals for the purchase of the Property, and brought proposals to the governing board to consider the approval of a sale. The governing board has selected a proposal and passed a resolution to approve the purchase and sale agreement with the selected buyer, which included the commission rate the Board will pay the broker. The District is currently in escrow with the designated buyer for sale of the property.

*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. As stated above, after receipt of the original waiver, the District brought proposals to the governing board, and the governing board selected a proposal and passed a resolution to approve the purchase and sale agreement with the selected buyer. The District has retained the services of a licensed real estate broker, whose commission has been specified in the documents required through a brokered sale.

*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. The District has provided notice of its adoption of a resolution of intent to sell the property and passed that resolution of intent to sell the property, in compliance with this Section as modified by the prior waiver.

*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. The District took steps to provide notice to the former owner in compliance with this Section as modified by the prior waiver.

*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 the proposals privately and will maximize the District’s ability to negotiate the most favorable transaction. The District has received and considered proposals and negotiated the most favorable transaction in compliance with this Section as modified by the prior waiver.

*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 having negotiated an agreement to sell 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 having negotiated an agreement to sell 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 Oceanside Unified School District (“District”) seeks a renewal of the original waiver (approved July 14, 2021) of those portions of the *Education Code* statutes requiring the District to open sealed proposals and hear oral bids to sell its surplus Pacifica Elementary School site. The Pacifica Elementary School site, located at 4991 Macario Drive, Oceanside, CA 92057, (“Property”) is not currently being used by the District and has been declared surplus.

The District seeks to sell the Property in a manner to ensure maximum benefit to the District, by (1) ensuring the chosen buyer is able to secure the entitlements and local government approvals necessary to effectuate the sale of the Property; (2) considering the reputation of a purchaser as well as the nature of community involvement associated with the proposal; and (3) utilizing the services of a broker to maximize the District’s return.

As a result, the District is seeking a renewal of waiver of certain portions of the *Education Code* so it can continue to pursue, and close escrow on, a sale to a buyer that was selected through an informal proposals process. Since approval of the previous waiver, the District developed a strategic plan for advertising and marketing the Property, worked closely with legal counsel and a broker to seek proposals for the purchase of the Property, and developed a process to sell the Property in a fair and open manner. As a result, the District received numerous proposals and selected the proposal that offered maximum benefit to the District. Although significant progress has been made by the District in selling the Property, given the complexity of the sale, including a two-year escrow period, the District requires additional time to finalize the sale of the Property.

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.

Student Population: 15971

City Type: Urban

Public Hearing Date: 1/17/2023

Public Hearing Advertised: Notice of the hearing was published in the Daily Transcript

Local Board Approval Date: 1/17/2023

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

Community Council Reviewed Date: 1/3/2023

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Sarah Polito

Position: Legal Counsel

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Bargaining Unit Date: 01/24/2023
Name: California School Employees Association (CSEA)
Representative: Dora Jaramilo
Title: Chapter President
Phone: 760-966-7828
Position: Neutral

Bargaining Unit Date: 01/18/2023
Name: Oceanside Teachers Association
Representative: Tiffany Cooper-Ortega
Title: President
Phone: 760-685-7505
Position: Neutral