

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY**

The following optional policy and accompanying administrative regulation detail the procedures that govern the district's sale or lease of surplus real property.

Education Code 17455 authorizes the sale, or lease for up to 99 years, of any district real property together with any personal property located thereon without approval of the voters within the district. To do so, the property must not or will not be needed by the district and the district must follow the procedures stated in Education Code 17387-17391

Pursuant to Education Code 17219, when the district has not used a previously used site for school purposes within the preceding five years, or has not used a newly acquired site within five years of acquisition for any of grades K-8 or seven years of acquisition for any of grades 7-12, the State Allocation Board (SAB) is authorized to charge an "unused site fee" pursuant to Education Code 17219-17224. For further information regarding non-use payments, see the Office of Public School Construction's Unused Site Program Handbook.

The Governing Board believes that district facilities and resources should be utilized in an economical and practical manner. The Superintendent or designee shall periodically study the current and projected use of all district facilities to ensure the efficient utilization of space for the effective delivery of instruction.

*(cf. 1330 - Use of School Facilities)*  
*(cf. 7110 - Facilities Master Plan)*  
*(cf. 7111 - Evaluating Existing Buildings)*  
*(cf. 7160 - Charter School Facilities)*

Pursuant to Education Code 17387-17391, before surplus real property is sold or leased, the Governing Board must appoint an advisory committee to advise the Board on the disposition of such property. Education Code 17388 and 17391 establish exceptions from this requirement. As amended by SB 820 (Ch. 110, Statutes of 2020), Education Code 17391 adds an exception, until July 1, 2024, for the sale or lease of property that has not previously operated, or was not constructed to be operated, as an early childhood education facility or a school for elementary or secondary instruction.

Education Code 17389 requires that the advisory committee be representative of specific groups within the community and be composed of not less than seven nor more than 11 members (commonly referred to as a "7-11 committee"). See the accompanying administrative regulation for further information on the composition and duties of this committee.

Prior to the sale or lease of any surplus real property, the Board shall appoint a district advisory committee to advise the Board regarding the use or disposition of schools or school building space which is not needed for school purposes. The Board may elect not to appoint a district advisory committee for any of the following: (Education Code 17388, 17391)

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY** (continued)

1. A rental of property for a period of time not exceeding 30 days
2. A lease or rental of surplus property to a private educational institution for the purpose of offering summer school
3. A sale, lease, or rental of surplus property to be used for teacher or other employee housing
4. Until July 1, 2024, a sale or lease of surplus property that has not previously operated, or was not constructed to be operated, as an early childhood education facility or a school for elementary or secondary instruction

*(cf. 1220 - Citizen Advisory Committees)*

Pursuant to Government Code 65402, if the county or city has adopted a general plan which is applicable in the area where the district property is located, the district must notify the county or city planning agency of the location, purpose, and extent of the proposed disposition of district property so that the agency can determine and report on the extent to which the disposition conforms with the local planning agency's general plan. The planning agency has 40 days during which it may raise objections. If objections are not raised within 40 days, the lack of response is deemed to be a finding that the district's proposed disposition of the property is in conformity with the local planning agency's adopted general plan.

In addition, to ensure that the proposed disposition of the property conforms with any general plan adopted by the local planning agency that affects or includes the area where the surplus property is located, the Board shall submit a report to the local planning agency describing the location of the surplus property and the purpose and extent of the proposed sale or lease. (Government Code 65402)

When proposing the sale or lease of surplus property, the district must also comply with Public Resources Code 21000-21177 (the California Environmental Quality Act) (CEQA), when applicable. Pursuant to 14 CCR 15061, the sale or lease of property is exempt from detailed CEQA review if there is no possibility that the sale or lease will have a significant environmental effect. In such cases, the district must adopt a notice of exemption in accordance with 14 CCR 14062.

The Board shall determine whether the sale or lease of the surplus property is subject to review under the California Environmental Quality Act. (Public Resources Code 21000-21177; 14 CCR 15061-15062)

Pursuant to Government Code 54956.8, the Board may hold a closed session for real property negotiations, including the sale or lease of property by the district. An Attorney General opinion (94 Ops.Cal.Atty.Gen. 82 (2011)) has concluded that only three subjects related to real property

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY** (continued)

negotiations may be considered in closed session: (1) the amount of consideration the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms. See BB 9321 - Closed Session.

The Board may meet in closed session with its real property negotiator prior to the sale or lease of real property by the district in order to grant its negotiator authority regarding the minimum price or rent and terms of the sale or lease. (Government Code 54956.8)

(cf. 9321 - Closed Session)

When a district is selling any surplus property or leasing it with an option to purchase, Education Code 17464 lists the public entities that must be given priority to lease or purchase the property and the types of notice that the district must provide such entities before disposing of the property. Under certain circumstances, districts may also need to comply with the Naylor Act (Education Code 17485-17500), which requires that priority be given to public agencies when disposing of any district property that includes a playground, playing field, or land with an outdoor recreational purpose. Under certain conditions, the district may grant priority to licensed child care providers pursuant to Education Code 17458 or may sell surplus property for less than fair market value to public entities for recreational purposes pursuant to Education Code 17230.

When selling or leasing district real property, the Board shall comply with the priorities and procedures specified in applicable law. (Education Code 17230, 17464, 17485-17499; Government Code 54222)

*(cf. 5148 - Child Care and Development)*

*(cf. 5148.2 - Before/After School Programs)*

*(cf. 5148.3 - Preschool/Early Childhood Education)*

In addition, when selling real property purchased, constructed, or modernized with funds received within the past 10 years from a state school facilities funding program, the Board shall consider whether any of the proceeds from the sale will need to be returned to the State Allocation Board (SAB) pursuant to Education Code 17462.3.

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY** (continued)**Resolution of Intention to Sell or Lease**

Before ordering the sale or lease of any real property, the Board shall adopt a resolution by a two-thirds vote of all of its members at a regularly scheduled open meeting. The resolution shall describe the property proposed to be sold or leased in such a manner as to identify it, specify the minimum price or rent, describe the terms upon which it will be sold or leased, and specify the commission or rate, if any, which the Board will pay to a licensed real estate broker out of the minimum price or rent. The resolution shall fix a time, not less than three weeks thereafter, for a public meeting, held at the Board's regular meeting place, at which sealed proposals to purchase or lease will be received and considered. (Education Code 17466)

*(cf. 9320 - Meetings and Notices)*  
*(cf. 9323.2 - Actions by the Board)*

The Superintendent or designee shall provide notice of the adoption of the resolution and of the time and place of the meeting that will be held to consider bids by posting copies of the resolution, signed by the Board, in three public places not less than 15 days before the date of the meeting. In addition, the notice shall be published at least once a week for three successive weeks before the meeting, in a newspaper of general circulation published in the county in which the district is located, if such a newspaper exists. (Education Code 17469)

Education Code 17470 requires districts to take reasonable steps to notify the former owner of the property of the public meeting at which bids will be considered. However, the Board is not 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.

At least 60 days prior to the public meeting, the Superintendent or designee shall take reasonable steps to provide written notification of the public meeting, by certified mail, to the former owner from whom the district acquired the property. (Education Code 17470)

**Acceptance/Rejection of Bids**

At the public meeting specified in the resolution of intention to sell or lease property, the Board shall open, examine, and declare all sealed bids. Before accepting a written proposal, the Board shall call for oral bids in accordance with law. (Education Code 17472, 17473)

The Board may reject any and all bids, either written or oral, and withdraw the properties from sale when the Board determines that rejection is in the best public interest. If no proposals are

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY** (continued)

submitted or the submitted proposals do not conform to all the terms and conditions specified in the resolution of intention to lease, the Board may lease the property in accordance with Education Code 17477. (Education Code 17476, 17477)

Of the proposals submitted by responsible bidders which conform to all terms and conditions specified in the resolution of intention to sell or lease, the Board shall finally accept the highest bid after deducting the commission, if any, to be paid to a licensed real estate broker, unless the Board accepts a higher oral bid or rejects all bids. (Education Code 17472)

The final acceptance of the bid may be made either at the same meeting specified in the resolution or at any adjourned/continued meeting held within 10 days. Upon acceptance of the bid, the Board may adopt a resolution of acceptance that directs the Board president, or any other Board member, to execute the deed or lease and to deliver the document upon performance and compliance by the successful bidder of all of the terms and conditions of the contract. (Education Code 17475-17478)

*(cf. 1431 - Waivers)*

**Use of Proceeds**

Pursuant to Education Code 17462, the proceeds derived from the sale of surplus property or lease with an option to purchase must generally be used for one-time expenditures for capital outlay or maintenance, with specified exceptions. The law does not place limitations on the use of proceeds for a lease of surplus property that does not include an option to purchase.

The Superintendent or designee shall ensure that the proceeds from the sale or lease with an option to purchase of surplus district property are used for one-time expenditures and not for ongoing expenditures such as salaries and general operating expenses. (Education Code 17462; 2 CCR 1700)

Proceeds from a sale of surplus district property shall generally be used for capital outlay or maintenance costs that the Board determines will not recur within a five-year period. Proceeds from a lease of district property with an option to purchase may be deposited into a restricted fund for the routine repair of district facilities, as defined by the SAB, for up to a five-year period. (Education Code 17462)

Pursuant to Education Code 17462, proceeds from the sale or lease with an option to purchase may be deposited in the district's general fund when the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements. Thus, districts may not apply to the state for new construction or modernization funding during that time period unless certain conditions specified in Education Code 17462 are satisfied.

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY** (continued)

If the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements, the proceeds from the sale or lease with an option to purchase may be deposited in a special reserve fund for the future maintenance and renovation of school sites or in the district's general fund. Proceeds from the sale or lease with option to purchase of district property may also be deposited in a special reserve fund for capital outlay or maintenance costs of district property that the Board determines will not recur within a five-year period. (Education Code 17462)

*(cf. 3100 - Budget)*

*(cf. 3460 - Financial Reports and Accountability)*

Until July 1, 2024, Education Code 17463.7, as added by SB 98 (Ch. 24, Statutes of 2020), authorizes the proceeds from the sale or lease of property purchased entirely with local funds to be used for any general fund purpose.

In addition, until July 1, 2024, if district surplus property was purchased entirely with local funds, the proceeds from the sale or lease of the property, together with any personal property located on the property, may be deposited into the general fund of the district and may be used for any one-time general fund purpose. Before exercising this authority, the Board shall: (Education Code 17463.7)

1. Submit to SAB documents certifying that the sale of real property does not violate the provisions of a local bond act and the real property is not suitable to meet projected school construction needs for the next 10 years
2. At a public meeting, adopt a plan for expending one-time resources from the sale or lease of the property which identifies the source and intended use of the surplus property proceeds and describes the reasons that the expenditure will not result in ongoing fiscal obligations for the district

Pursuant to Education Code 17462.3, if the district is selling real property purchased, improved, or modernized with funds received from a state school facilities funding program within the previous 10 years, the district is required to return those funds to SAB under specified conditions. The district must notify OPSC of the sale by submitting Form SAB 308, available on OPSC's web site.

Whenever the district sells real property that was purchased, improved, or modernized with funds that were received from a state school facilities funding program within the previous 10 years, the district shall notify OPSC within 90 calendar days of the sale of the property if the proceeds from the sale are not used for capital outlay and the property is not sold to a charter school, another school district, a county office of education, or an agency that will use the property exclusively for the delivery of child care and development services. If SAB

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY** (continued)

subsequently makes a finding that the sale is subject to Education Code 17462.3, the district shall return the funds to the SAB within 90 calendar days of the finding. (2 CCR 1702)

*Legal Reference:*

*EDUCATION CODE*

*17219-17224 Acquisition of property not utilized as school site; nonuse payments; exemptions*

*17230-17234 Surplus property*

*17385 Conveyances to and from school districts*

*17387-17391 Advisory committees for use of excess school facilities*

*17400-17429 Leasing property*

*17430-17447 Leasing facilities*

*17453 Lease of surplus district property*

*17455-17484 Sale or lease of real property, especially:*

*17462.3 State Allocation Board program to reclaim funds*

*17485-17500 Surplus school playground (Naylor Act)*

*17515-17526 Joint occupancy*

*17527-17535 Joint use of district facilities*

*33050 Request for waiver*

*38130-38139 Civic Center Act*

*GOVERNMENT CODE*

*50001-50002 Definitions*

*54220-54232 Surplus land, especially:*

*54222 Offer to sell or lease property*

*54950-54963 Brown Act, especially:*

*54952 Legislative body, definition*

*PUBLIC RESOURCES CODE*

*21000-21177 California Environmental Quality Act*

*CODE OF REGULATIONS, TITLE 2*

*1700-1702 Surplus property; use of proceeds*

*COURT DECISIONS*

*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District, (2006) 139 Cal.App.4th 1356*

*ATTORNEY GENERAL OPINIONS*

*94 Ops.Cal.Atty.Gen. 82 (2011)*

*Management Resources: (see next page)*

**SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY (continued)**

*Management Resources:*

*CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS*

*Closing a School Best Practices Guide*

*OFFICE OF PUBLIC SCHOOL CONSTRUCTION PUBLICATIONS*

*Unused Site Program Handbook, December 2015*

*WEB SITES*

*CSBA: <http://www.csba.org>*

*California Department of Education, School Facilities Planning Division: <http://www.cde.ca.gov/ls/fa>*

*Coalition for Adequate School Housing: <http://www.cashnet.org>*

*Office of Public School Construction: <http://www.dgs.ca.gov/opsc>*

Policy

adopted: April 14, 1997

revised: January 13, 2009

revised: November 10, 2009

revised: February 23, 2010

revised: November 8, 2011

revised: October 28, 2014

revised: April 10, 2018

Revised: March 9, 2021

**VISALIA UNIFIED SCHOOL DISTRICT**

Visalia, California



**Sale, Lease, Rental Of District-Owned Real Property**

**District Advisory Committee**

The district advisory committee on use or disposition of surplus school buildings or space shall consist of 7-11 members representative of each of the following: (Education Code 17389)

1. The district's ethnic, age group, and socioeconomic composition
2. The business community, such as store owners, managers, or supervisors
3. Landowners or renters, with preference to representatives of neighborhood associations
4. Teachers
5. Administrators
6. Parents/guardians of students
7. Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities and counties in which the surplus property is located

This committee shall: (Education Code 17390)

1. Review projected school enrollment and other data to determine the amount of surplus space and real property
2. Establish and circulate throughout the attendance area a priority list for use of surplus space and real property that will be acceptable to the community
3. Hold hearings, with community input, on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes
4. Make a final determination of limits of tolerance of use of space and real property
5. Send the Governing Board a report recommending uses of surplus space and real property

The district advisory committee shall comply with open meeting requirements of the Brown Act. (Government Code 54952)

(cf. 1220 - Citizen Advisory Committees)  
(cf. 9130 - Board Committees)