

(Attachment B) Use CSBA Policy as is – reflects New Law (AB1157,2017)

CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3280(a)

SALE OR LEASE OF DISTRICT-OWNED REAL PROPERTY

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

When district properties are not being utilized for school purposes after specific time periods, Education Code 17219-17224 authorize the State Allocation Board (SAB) to charge an "unused site fee." **The Office of Public School Construction has developed a guide, the Unused Site Program Handbook, to assist districts with non-use payments. For further information regarding non-use payments, see the Office of Public School Construction's Unused Site Program Handbook.**

Education Code 17455 authorizes the sale, or lease of up to 99 years, of any district real property together with any personal property located thereon without taking a vote of the electors of the district. To do so, the property must not or will not be needed by the district and the district must follow the procedures under Education Code 17387-17391. **When a district is selling any property or leasing it with an option to purchase, Education Code 17464 lists the public entities that have priority to lease or purchase surplus district properties and the types of notice that the district must provide such entities before disposing of the property. Pursuant to Education Code 17457.5, as amended by AB 86 (Ch. 48, Statutes of 2013), an offer to sell the property must first be extended to a charter school that: (1) projects an in-district average daily attendance of at least 80 students for the following fiscal year, (2) submitted a written request to the district to be notified of surplus property offered for sale or lease by the district, and (3) intends to use the property exclusively to provide instruction or instructional support.**

Comment [J1]: New Law eliminates requirement to first offer surplus property to a charter school with at least 80 students.

Under certain circumstances, districts may also need to comply with Education Code 17485-17500 (the Naylor Act), which require the granting of priority 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 proposing the sale or lease of surplus property, the district must also comply with the California Environmental Quality Act, Public Resources Code 21000-21177.

The Governing Board believes that **the district should utilize its** facilities and resources **should be utilized in the most 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)

Note: Pursuant to Education Code **17388 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.

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Education Code 17388 and 17391 establish exceptions from this requirement for rentals not exceeding 30 days and for the lease or rental of a district facility to a private educational institution

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

for the purpose of offering summer school. In addition, Education Code 17391, as amended by AB 1157 (Ch. 717, Statutes of 2017), provides that an advisory committee need not be appointed prior to the sale, lease, or rental of excess real property if it is to be used for teacher or other employee housing.

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 **prior to the sale or lease of any surplus real property** to advise the Board regarding the use or disposition of schools or school building space which is not needed for school purposes. **Rentals of surplus property not exceeding 30 days are exempted from this requirement.** When the sale, lease, or rental of surplus property is for the purpose of teacher or other employee housing or for the offering of summer school by a private educational institution, the Board may elect not to appoint a district advisory committee. (Education Code ~~17388-17389 17387-17391~~)

Comment [J2]: New Law, no longer need advisory committee when purpose is for employee housing

(cf. 1220 - Citizen Advisory Committees)

Note: Pursuant to Government Code 65402, ~~before disposing of any real property, the district is required to submit a report to its local planning agency for comparison with the local planning agency's general plan. 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 acceptance of the district report. ~~If objections are timely raised, the Board may either make adjustments to accommodate such objections or take further steps to override those objections. 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.~~

~~Upon determination that district property is no longer needed, or may not be needed until some future time, If the local planning agency has adopted a general plan that affects or includes the area where the surplus property is located, the Board shall first submit a report to the local planning agency as to what real property the district intends to offer for sale or lease describing the location of the surplus property and the purpose and extent of the proposed sale or lease. (Government Code 65402)~~

Note: 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**

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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.

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

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)

Note: When a district is selling any surplus property or leasing it with an option to purchase, Education Code 17464 lists the public entities that have **must be given** priority to lease or purchase surplus district properties ~~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 ~~(the Naylor Act)~~), which requires **that the granting of 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. Pursuant to Education Code 17457.5, as amended by AB 86 (Ch. 48, Statutes of 2013), an offer to sell the property must first be extended to a charter school that: (1) projects an in-district average daily attendance of at least 80 students for the following fiscal year, (2) submitted a written request to the district to be notified of surplus property offered for sale or lease by the district, and (3) intends to use the property exclusively to provide instruction or instructional support. **The requirement to first offer surplus property to a charter school with a projected in-district average daily attendance of at least 80 students expired July 1, 2016 pursuant to the terms of Education Code 17457.5.**

~~Not less than 40 days after issuance of the report to the local planning agency, and prior to entering into any agreement for sale or lease of~~ **When selling or leasing** district real property, the Board shall ~~offer to sell or lease district owned real property in accordance with~~ **comply with** the priorities and procedures specified in applicable law. (Education Code 17230, ~~17387-17391, 17457.5,~~ 17464, 17485-~~17500-17499~~; Government Code 54222, ~~65402~~)

(cf. 5148 - Child Care and Development)

(cf. 5148.2 - Before/After School Programs)

(cf. 5148.3 - Preschool/Early Childhood Education)

Note: Pursuant to Education Code 17462.3, ~~as amended by AB 308 (Ch. 496, Statutes of 2013)~~, the SAB may require a district selling real property purchased, ~~constructed~~ **improved**, or modernized with funds received from a state school facilities funding program to return those funds if: (1) the state funds were received and the property purchased or improved within the previous 10 years; (2) the proceeds from the sale are not used for capital outlay; and (3) 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.

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

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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.

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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)

In accordance with Education Code 17470, the Superintendent or designee shall take reasonable steps to provide notification to the former owners of the property of the district's intent to sell it.

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 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)

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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)

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

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

Note: Pursuant to Education Code 17462, the proceeds derived from the sale ~~or lease~~ of surplus property ~~or lease with an option to purchase~~ must ~~generally~~ be used for capital outlay or maintenance, ~~except as provided below~~. However, 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. In addition, Education Code 17462 requires that the proceeds be used for one-time expenditures and prohibits the use for ongoing expenditures ~~such as salaries and general operating expenses~~. 2 CCR 1700 defines "ongoing expenditures" as costs paid by a district's general or special fund in support of salaries. However, 2 CCR 1700 ~~creates an exception and~~ authorizes the use of such proceeds, if approved by the SAB, for one-time funding to reduce a district's unfunded liability for other postemployment benefits (OPEBs) (i.e., medical, dental, vision, hearing, life insurance, long-term care, long-term disability, and other nonpension benefits for retired employees). For information about prefunding OPEBs and reporting the district's liability for OPEBs, see BP 3100 - Budget and AR 3460 - Financial Reports and Accountability.

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 district surplus ~~district~~ property are used ~~in accordance with law for one-time expenditures and not for ongoing expenditures such as salaries and general operating expenses.~~ (Education Code 17462)

Proceeds from a sale of surplus district property shall be used for capital outlay or maintenance costs that the Board determines will not recur within a five-year period. (Education Code 17462)

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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)

Note: 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

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

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.

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)

Note: As amended by AB 86 (Ch. 48, Statutes of 2013), Education Code 17463.7 has extended, until January 1, 2016, the authority to use the proceeds from the sale of surplus real property, along with the proceeds from any personal property located on that real property, for any one time general fund purpose. Districts that choose to exercise this authority will be ineligible for hardship funding from the SAB for five years after the proceeds are deposited.

Prior to exercising this authority, Education Code 17463.7 requires the Board to adopt a plan for expending the resources and to make specific certifications to the SAB, as specified below. Education Code 17463.7 contains additional requirements applicable to the sale of property purchased with proceeds from a local general obligation bond or revenue from developer fees.

~~Pursuant to the authorization in Education Code 17463.7, the district may expend proceeds from the sale of surplus real property, along with the proceeds from any personal property located on that real property, for any one time general fund purpose(s). Before the district exercises this authority: (Education Code 17463.7)~~

~~1. The Board shall submit documents to the SAB certifying that:~~

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a. ~~The district has no major deferred maintenance requirements not covered by existing capital outlay resources.~~

b. ~~The sale of real property pursuant to Education Code 17463.7 does not violate the provisions of a local bond act.~~

~~(cf. 7214 – General Obligation Bonds)~~

e. ~~The real property is not suitable to meet projected school construction needs for the next 10 years.~~

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

~~2. The Superintendent or designee shall present to the Board, at a regularly scheduled meeting, a plan for expending these one time resources. The plan shall identify the source and use of the funds and shall describe the reasons that the expenditure shall not result in ongoing fiscal obligations for the district.~~

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:

~~17457.5 Offer to charter school~~

17462.3 State Allocation Board program to reclaim funds

~~17463.7 Proceeds for general fund purposes~~

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

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1700 Definitions related to surplus property

COURT DECISIONS

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

Management Resources: (see next page)

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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, May 2008 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>

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Policy Reference UPDATE Service

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