



# ORANGE UNIFIED SCHOOL DISTRICT

## Business Services

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### **STATEMENT: BROWN ACT COMPLIANCE AND SURPLUS PROPERTY DISPOSITION PROCESS**

The District has conducted its closed session discussions in compliance with the Ralph M. Brown Act ("Brown Act") regarding all School Board communications. The acceptable topics that may be discussed in closed session under the "real-estate negotiations exception" ("Negotiation Exception") to the Brown Act are based on the ultimate purpose of the Negotiation Exception, which is to allow public agencies to negotiate in good faith without limiting their negotiation power by having negotiation strategies discussed in open session. In general, there are three categories that may be discussed in closed session: (1) the amount of consideration that the public agency is willing to pay or accept; (2) the form, manner and timing of the transaction; and (3) items that are essential to arriving at the authorized price and payment terms. Examples of information that may be discussed in closed session, include, but are not limited to, (1) the range of payment that may be acceptable; (2) how low or high to start negotiations; (3) the sequencing and strategy of offers or counteroffers; (4) payment alternatives; and (5) information designed to assist the agency in determining the value of the property in question.

In addition to compliance with the Brown Act, the District has and will continue to follow all applicable legal requirements for the disposition of surplus property, which has or may include sale, lease, license or exchange.

Before surplus property is sold or leased, Education Code section 17388 requires that the governing board of a school district must appoint a district advisory committee to advise the governing board on the disposition of such property. The District has already completed this step for the Killefer, Walnut, and Peralta sites.

With respect to sale of property, after the advisory committee recommends the sale of surplus property, a school district must offer to sell the surplus property to certain public agencies in a specified order. Specifically, Education Code section 17464 requires that a school district, prior to offering property for sale to the general public, must first offer such property to certain public agencies through two categories of priority. The District has already completed this step for the Killefer and Walnut sites. With respect to the Peralta site, no decision has been made to sell the property at this point, but if the Board were to make a decision in the future to sell the property, the District would comply with Education Code section 17464 and first offer the property to the public agencies identified therein.

If one of the entities described in Education Code section 17464 does not acquire the Property, the District could sell the Property at a public auction. A public auction has been held previously for both Killefer and Walnut sites. However, the contracts entered into with developers for the Killefer and Walnut sites ultimately fell out of escrow. The District may choose to repeat the public auction for the Killefer and Walnut sites. For the Killefer site, the Board has previously approved a rank of the bids received; therefore, the District may choose to open escrow with a developer included on the approved bid ranking list instead of conducting a new bid hearing.

It is important to note that complex property transactions, such as these, often take years to come to fruition. The processes followed by the Orange Unified School District, with respect to the disposition of the District's surplus properties, have been consistent with the applicable statutory requirements for the disposition of surplus property which include Education Code Sections 17388, et seq., 17455, et seq., and 33050, et seq., as well as Government Code 54220, et seq., among others.