

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationNovember 2021 AgendaItem #W-09

## Subject

Request by the **Mountain Empire Unified School District** to waive California *Education Code* Section 56366(d), the requirement for nonpublic, nonsectarian schools or agencies to be state-certified, to allow the use of state and federal special education funds for the placement of one high school student with disabilities at an uncertified out-of-state school for students with disabilities located in Canton, Massachusetts.

## Waiver Number

* 2-7-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Mountain Empire Unified School District (MEUSD) and the East County Special Education Local Plan Area (SELPA) are seeking a waiver of the California *Education Code* (*EC*) Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of one high school student with disabilities at the Judge Rotenberg Educational Center (JREC), an uncertified school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts.

The MEUSD and the East County SELPA have not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to the placement of the student at the JREC, the MEUSD exhausted all district placement options before contacting multiple in-state and out-of-state NPSs having RTCs to find a suitable placement for the student. Multiple certified and non-certified facilities, totaling 18 in California and 54 out of state were contacted. All of these placements have either declined the application or do not have the services necessary for the student to receive a free and appropriate public education (FAPE). In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s demonstrated issues of physically and sexually assaultive behaviors, frequent physical aggression, threatening behaviors, property damage, and elopement. When the student was placed at a certified residential NPS earlier in the school year, the student eloped from the facility within two weeks, assaulted staff, attempted sexual assault, and was not allowed to return to the placement. At the student's second RTC, the student had multiple incidents of acting out sexually and committed an assault against a staff member, resulting in the staff member incurring a broken nose and multiple broken ribs.

Only the JREC has accepted the student's application. Upon researching and virtually touring the facility, it appears to the district and the SELPA that the facility has a clearly articulated, positive behavior intervention program, with multiple levels of support to address the intensive aggressive and assaultive behaviors of the student. The district and the SELPA believe that the program additionally provides therapeutic supports to address the student's extreme needs. The individualized education program (IEP) team feels this placement is the only location at this time where the student will receive educational benefit and FAPE. Without an appropriate placement, the IEP team believes that the student's behaviors will lead to significant injury to the student and others, sexual assaults, or even death.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the least restrictive environment (LRE). Local educational agencies (LEAs) must offer a full continuum of program options to meet the educational and related service needs of students with disabilities. Each student found eligible for special education and related services is provided with an IEP which is developed between the LEA and the student’s parent(s) or guardian(s), and others as applicable, to decide what types of instruction and related services are needed to meet the student’s needs in the LRE. One of the placement options available along this continuum are NPSs, which are considered separate schools and highly restrictive placement options.

When an LEA is unable to find an appropriate placement for a student with disabilities in a California public school and/or state-certified NPS due to the student’s comprehensive, unique needs, the IEP team may deem it necessary for the student to be placed in an uncertified NPS that is able to meet the student’s needs. As members of the IEP team, the student’s parent(s) or guardian(s) must be included in the decision-making process and must provide written consent to the placement.

All private school programs and facilities do not necessarily meet the California NPS certification standards for providing special education and specified related services to individuals with exceptional needs. A waiver of the NPS certification requirements authorizes placing LEAs to enter into a master contract agreement with the private school sites which are not certified as a California NPS, and to use federal and state special education funds to finance the placement.

Upon the receipt of a child specific NPS waiver, the California Department of Education (CDE) ensures the LEA submitted all required documentation and performs a detailed analysis of the documentation. If the waiver request meets all of the waiver requirements, the CDE, Special Education Division (SED) will recommend approval of the waiver, along with any appropriate conditions that are specific to the waiver.

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The MEUSD and the East Valley SELPA submitted supporting documents as part of the waiver submission process. The CDE recommends approval of the waiver with conditions, for the period requested, July 26, 2021, to June 30, 2022.

If the SBE agrees with the CDE’s recommendation to approve the waiver with conditions, the MEUSD and the East Valley SELPA will be authorized to use state and federal special education funds for the placement of the student at the JREC for the period requested.

The CDE recommends that the approval include the following conditions:

* The MEUSD and the East Valley SELPA will review the student’s placement through an on-site visit to the school at least two times during the period of this waiver.
	+ - After each on-site visit, the MEUSD and the East Valley SELPA shall provide written reports to the CDE, SED documenting the findings of the visit, or consultation. These reports shall include documentation of the student’s academic and behavioral progress, other information supporting the appropriateness of the placement, and details of the on-site review.
* The MEUSD and the East Valley SELPA will consult with the JREC liaison monthly to monitor the provision of services and review the student’s progress using email, phone calls, and/or real-time virtual consultations, as well as the review of program data. Program data will include the progress on IEP goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.
* The MEUSD and the East Valley SELPA will contact the student and the individual who legally holds the educational rights of the student, each month, to discuss progress and address any concerns.
* The MEUSD and the East Valley SELPA will schedule IEP meetings, and may participate virtually, if consistent with LEA policies and procedures, at a minimum of every four months to review program data, the student’s progress, both academically and therapeutically, and determine any necessary changes in the student’s academic and/or therapeutic program.

If the waiver is approved, the SED will monitor the conditions established by the SBE to ensure the MEUSD meets the conditions of the waiver.

## Summary of Key Issues

The MEUSD and the East County SELPA have not requested a child specific NPS certification waiver, previously, for this student. Prior to the placement of the student at the JREC, the MEUSD exhausted all district placement options before contacting multiple in-state and out-of-state NPSs having RTCs to find a suitable placement for the student. Multiple certified and non-certified facilities, totaling 18 in California and 54 out of state were contacted. All of these placements have either declined the application or do not have the services necessary for the student to receive a FAPE. In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s demonstrated issues of physically and sexually assaultive behaviors, frequent physical aggression, threatening behaviors, property damage, and elopement.

The student had been in a variety of educational placements within and/or outside of the LEA. The IEP team recommended placement of the student at an RTC on February 26, 2020, due to local school programs and NPS programs inability to manage the student’s high level of aggression. In addition, the student had been hospitalized multiple times due to violence in the home setting. Student has had many interventions to address behaviors such as: specialized school programs, behavior intervention plans, individual and parent counseling and in-home services without success. When the student was placed at a certified residential NPS earlier in the school year, the student eloped from the facility within two weeks, assaulted staff, attempted sexual assault, and was not allowed to return to the placement. At the student's second RTC, the student had multiple incidents of acting out sexually and committed an assault against a staff member, resulting in the staff member incurring a broken nose and multiple broken ribs.

Only the JREC has accepted the student's application. Upon researching and virtually touring the facility, it appears to the district and the SELPA that the facility has a clearly articulated, positive behavior intervention program, with multiple levels of support to address the intensive aggressive and assaultive behaviors of the student. The district and the SELPA believe that the program additionally provides therapeutic supports to address the student's extreme needs. The IEP team feels this placement is the only location at this time where the student will receive educational benefit and FAPE. Without an appropriate placement, the IEP team believes that the student's behaviors will lead to significant injury to the student and others, sexual assaults, or even death. The anticipated return date of the student to the MEUSD is July 1, 2022.

**Demographic Information:** The MEUSD has a student population of 1,627 and is located in a rural city in San Diego County.

## Summary of Previous State Board of Education Discussion and Action

Since the September 2018 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 18 waivers similar to this waiver allowing LEAs to waive relevant *EC* provisions for using special education funds for the placement of students at sites which have not been certified by the CDE.

## Fiscal Analysis (as appropriate)

If this waiver is approved, the MEUSD may utilize state and federal special education funds for the placement of this student at the JREC. If this waiver is denied, the MEUSD may utilize only local funds to support the student’s placement at the JREC. The yearly cost for placement at the JREC for this student is $465,741.89.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** MEUSD Specific Waiver Request 2-7-2021 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* (*EC*) Section 56366(d)

| Waiver Number | District | Period of Request | District’s Request | CDE Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-7-2021 | Mountain Empire Unified School District (MEUSD) | **Requested**July 26, 2021, to June 30, 2022**Recommended:** July 26, 2021, to June 30, 2022 | To waive nonpublic school (NPS) certification to allow the MEUSD to use state and federal special education funds for the placement of a student in an uncertified NPS | Approval with conditions for the period the student is placed at the uncertified NPS | 3/9/2021 | The MEUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

Created by California Department of Education, September 2021

# Attachment 2: Mountain Empire Unified School District Specific Waiver Request 2-7-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768213

Waiver Number: 2-7-2021

Active Year: 2021

Date In: 7/7/2021 12:55:44 PM

Local Education Agency: Mountain Empire Unified

Address: 3305 Buckman Springs Rd.

Pine Valley, CA 91962

Start: 7/26/2021

End: 6/30/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366.1(a)

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: The Mountain Empire Unified School District and East County SELPA make the request to waive California *Education Code* (*EC*) Section 56366(d), the requirement for nonpublic, nonsectarian schools or agencies to be state-certified, to allow the use of state and federal special education funds for the placement of one high school student with disabilities at an uncertified out-of-state nonpublic school for students with disabilities located in Canton, Massachusetts (MA)

Outcome Rationale: MEUSD and East County SELPA are seeking a waiver for the placement for a high school student who meets the disability category of Intellectual Disability. The student demonstrates physically and sexually assaultive behaviors, frequent physical aggression, threatening behaviors, property damage, and elopement. When the student was placed at a certified residential NPS earlier in the school year, [the student] eloped from the facility within two weeks, assaulted staff, attempted sexual assault, and was not allowed to return to the placement. At the student's second RTC, he had multiple incidents of acting out sexually and committed a recent act of assault against a staff member, resulting in a the staff member's broken nose and multiple broken ribs.

Multiple certified and non-certified facilities, totaling 18 in California and 54 out of state have been contacted. All of these placements have either declined the application or do not have the services necessary for the student to receive a FAPE.

Only the facility for which this waiver is requested has accepted the student's application. Upon researching and virtually touring the facility, it appears that the facility has a clearly articulated, positive behavior intervention program, with multiple levels of support to address the intensive aggressive and assaultive behaviors of the student. The program additionally provides therapeutic supports to address the student's extreme needs. The IEP team feels this placement is the only location at this time where the student will receive educational benefit.

Without an appropriate placement, the IEP team believes that the student's behaviors will lead to significant injury to others, to the student, sexual assaults, or even death.

Student Population: 1627

City Type: Rural

Local Board Approval Date: 3/9/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Bill Dennett

Position: Director of Pupil Services and Special Education

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Telephone: 619-473-8869 x1150

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Bargaining Unit Date: 02/22/2021

Name: Mountain Empire Teachers Association

Representative: Christine Goss

Title: President of META

Phone: 619-473-8601 x2218

Position: Support

Comments: