

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education September 2021 Agenda Item #W-14

## Subject

Request by the **Grossmont Union High 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 Jackson, Tennessee.

## Waiver Number

6-5-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Grossmont Union High School District (GUHSD) requests to waive California *Education Code* (*EC)* 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of one student with disabilities at the Perimeter of Jackson (POJ), Tennessee, in an uncertified out-of-state NPS residential treatment center (RTC) in Jackson, Tennessee in order to meet the student’s educational, therapeutic, and behavioral needs. The POJ is currently not certified by the California Department of Education (CDE) as a certified nonpublic school (NPS).

The GUHSD has not requested a child specific NPS certification waiver, previously, for this student. Prior to the placement of the student at the POJ, the GUHSD 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, a fifteen-year-old currently in the tenth grade. The POJ is considered the most appropriate placement option for the student due to their ability to meet the student’s services at the cognitive level in a secure facility that can meet the student’s therapeutic and behavioral needs as well. The student, whose special education eligibility category is identified as Intellectual Disability, was denied admission to 45 of 46 certified NPSs with an RTC component. The facilities could not ensure the safety and welfare of the student and others due to the student’s aggressive behavior and could not ensure the provision of a free appropriate public education (FAPE). The student was accepted by Devereux Viera, Florida, a California certified NPS; however, they do not have an opening and do not know when they will have an opening in the future.

The individualized education program (IEP) team agreed the POJ, an uncertified school and RTC, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the least restrictive environment (LRE). The 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 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.

## Authority for Waiver

*California Education Code (EC)* Section 56101

## Recommendation

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

The GUHSD submitted all required documents as part of the waiver submission process. The CDE recommends approval of this waiver, with conditions, for the period the student is placed at the POJ, from May 18, 2021, through May 17, 2022. This recommendation for approval is contingent upon the following conditions:

* The IEP team will meet no less than every 6 months in order to review the appropriateness of services, and concerns in relation to the student’s placement and IEP needs and 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.
* On-going case management services will be provided by GUHSD and SDCOE Case Management Program to monitor the student’s progress and overall care while in the RTC/NPS. The onsite visits with the school may be accomplished through real-time virtual consultations if there is an LEA policy in effect during the period of this waiver which prohibits travel to the school site.
  + After each onsite visit, or real-time virtual consultation, as applicable, the LEA 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 onsite review.
* The GUHSD will consult with the POJ 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 GUHSD 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 parent will have the opportunity to visit the student quarterly, upon request, at the district’s expense to maintain familial bonds and observe the student in their new environment in order to be able to fully participate in team discussions.

If the waiver is approved, the SED will monitor the conditions established by the State Board of Education (SBE) to ensure the GUHSD meets the conditions of the waiver.

## Summary of Key Issues

After exhausting all district and local NPS placement options, GUHSD IEP team determined that an NPS with an RTC is the most appropriate placement option. The student was in residential care at Copper Hills, Utah from June 1, 2020, to February 2, 2021. While in placement the student had severe incidents of aggression (assaults towards students and staff) resulting in a 20-day notice being given. The student returned home after discharging from residential care and had aggression and eloped from the home, placed herself in unsafe situations, was psychiatrically hospitalized for presenting as a danger to self and others and then placed in Juvenile Hall due to non-compliance with terms of Probation. While in Juvenile Hall, the student has had episodes of aggression, psychosis and mood instability.

In total, the district considered 46 placement options. A total of 46 NPS with RTC programs were identified as potential placement options to meet the unique needs of the student (cognitive disabilities, significant behavioral, and therapeutic needs). The 14 placement options considered are in-state facilities, 32 placement options identified are out-of-state facilities.

All 46 programs were contacted for placement consideration, in all but one instance the programs did not feel they could meet the student’s needs. Reasons stated include: significant elopement concerns, academic and/or behavioral profile does not fit the population, and/or student’s behavior is too aggressive. The student was accepted by Devereux Viera, Florida, a California certified NPS; however, they do not have an opening and do not know when they will have an opening in the future.

The IEP team, which included the student’s parent, agreed that POJ, an uncertified NPS and RTC, is able to meet the student’s comprehensive unique needs in alignment with their IEP and provide the student with FAPE.

The POJ, Tennessee is licensed by the State of Tennessee as a Psychiatric Residential Treatment Facility and is CARF Accredited. Jackson Behavioral is accredited by the Department of Education in Tennessee.

The POJ, Tennessee is considered the most appropriate placement option for the student due to their ability to meet the student’s services at their cognitive level in a secure facility that can meet the student’s therapeutic and behavioral needs as well.

The POJ, Tennessee offers family therapy, individual therapy, group therapy, specialized academic instruction, art/activity therapy, psychiatry, speech language pathologist and occupational therapy on site. Class sizes are small with a certificated teacher and an instructional assistant. Students have 5 classes per day with school hours from 8-3pm.

If the SBE approves the waiver the GUHSD will be able to continue to use state and federal special education funds for the placement of this student at the POJ for the period requested.

**Demographic Information:** The GUSHD has a student population of 17,118 and is located in an urban area 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 19 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 GUHSD may utilize state and federal special education funds for the placement of this student at POJ. If this waiver is denied, the GUHSD may utilize only local funds to support the student’s placement at POJ. The yearly cost for the placement of the student at the proposed uncertified private/NPS: $203,920. Daily room and board, including therapeutic services, is $500 a day. Education services daily rate is $119 per day.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** GUHSD Specific Waiver Request 6-5-2021 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-5-2021 | Grossmont Union High School District (GUHSD) | **Requested:** May 18, 2021, to May 17, 2022  **Recommended:** May 18, 2021, to May 17, 2022 | To waive NPS certification to allow the GUHSD 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 | 5/11/2021 | The GUHSD 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: June 2021

# Attachment 2: Grossmont Union High School District Specific Waiver Request 6-5-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768130

Waiver Number: 6-5-2021

Active Year: 2021

Date In: 5/17/2021 4:04:48 PM

Local Education Agency: Grossmont Union High

Address: 1100 Murray Dr.

El Cajon, CA 92020

Start: 5/18/2021

End: 5/17/2022

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: [(d) A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the nonpublic, nonsectarian school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.]

Outcome Rationale: After exhausting all district and local NPS placement options, GUHSD team determined that a NPS with a RTC is the most appropriate placement option. The student was in residential care at Copper Hills, UT from 6/1/20-2/2/21. While in placement the student had severe incidents of aggression resulting in a 20 day notice being given. The student returned home after discharging from residential care and had aggression and eloped from the home, placed herself in unsafe situations, was psychiatrically hospitalized for presenting as a danger to self and others and then placed in Juvenile Hall due to non-compliance with terms of Probation. While in Juvenile Hall, the student has had episodes of aggression, psychosis and mood instability. In total, the district considered 66 placement options. 46 NPS with RTC programs were identified as potential placement options to meet the unique needs of the student (cognitive disabilities, significant behavioral and therapeutic needs). 14 placement options considered are in-state facilities, 32 placement options identified are out-of-state facilities.

Student Population: 17118

City Type: Urban

Local Board Approval Date: 5/11/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Rose Tagnesi

Position: Director

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