

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education January 2024 Agenda Item #W-04

## Subject

Request by the **Curtis Creek Elementary School District and Tuolumne County Special Education Local Plan Area** to retroactively waive California *Education Code* Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of one middle school student with disabilities at the Judge Rotenberg Education Center, an uncertified non-public school for students with disabilities with a residential treatment center, in Canton, Massachusetts.

## Waiver Number

5-12-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Curtis Creek Elementary School District (CCESD), and the Tuolumne SELPA Tuolumne County Special Education Local Plan Area (Tuolumne SELPA) are seeking a renewal waiver of the *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 middle school student (Student) at the Judge Rotenberg Education Center (JREC), an uncertified private school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts.

The District stated that the Student began attending the JREC in December 2020. In August 2020, the District applied for a waiver to fund the Student’s attendance at JREC for the period of February 1, 2021 through February 1, 2022, which was approved by the State Board of Education (SBE) during the July 2021 meeting. (Waiver #2-8-2020-W-12.)

The District stated in the previous waiver that the CCESD attempted to place the Student at twelve California certified NPSs, but all placements were denied. The JREC accepted the student, and the IEP team determined the JREC would provide a free and appropriate public education (FAPE) for the student.

The District believes that based on the most recent IEP for the Student, this placement continued to meet the needs of the Student. Through continuous meetings and ongoing communication with JREC, the District has noted the Student was progressing towards their academic and behavior goals while placed at JREC. Since February 22, 2023, the Student is no longer attending the out-of-state placement and has returned to a California School

The California Department of Education (CDE) has verified, that since approval of the initial waiver, the District has substantially complied with the required terms of monitoring while the Student was at JREC. Per the District, because no CDE-certified residential treatment center had accepted the student, and JREC continued to be appropriate for the Student for the period requested in the waiver application.

The District is requesting a renewal waiver for the period of February 1, 2022, to July 31, 2022.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE Education 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 Individualized Education Program (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 ensured 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: Yes
* Approval with conditions: No
* Denial: No

The CCESD provided the CDE with all required waiver submission documents. The CDE has reviewed these documents and recommends approval of this waiver, for the period the student is placed at the JREC, February 1, 2022, through July 31, 2022. The CDE recommends no conditions at this time since this waiver is retroactive and the student is no longer attending the out-of-state placement and has returned to a California School. The CCESD substantially met the conditions under the prior waiver. Although the parents elected not to attend IEP meetings based on the advice of their counsel, the District explained that it made substantial efforts to continue to meet with the parents and met regularly with JREC as part of the IEP meetings condition. As such, the District substantially met the following conditions:

* The CCESD consulted and coordinated with the Tuolumne SELPA to review the students placement through an on-site visit to the school at least once during the period of this waiver.
* The CCESD and the Tuolumne SELPA consulted 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. The monthly consultation also included a review of program data. Program data included the progress on IEP goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.

## Summary of Key Issues

The District stated that the Student’s placement at JREC was requested after a determination against CCESD from the Office of Administrative Hearings. All appropriate CDE certified options had either rejected the Student, or notified the District that they could not provide the services necessary. Because of the Student’s unique needs, JREC, although uncertified, had been the only school located that can meet student's needs and was willing to accept their placement since the end of 2020.

The District stated the JREC continued to provide intensive mental health services paired with specialized academic instruction in a residential placement. Supervision was required day and night due to Student’s frequent and intensive behavior and social emotional needs. The District believed this placement is the best fit for the Student, as demonstrated by the Student’s progress since admission to the JREC in 2020. Based on the Student’s progress, the Student returned to a California school on February 22, 2023.

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

**Demographic Information:** The CCESD has a student population of 441 and is located in a suburban area in **Tuolumne** County.

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

Since the September 2019 SBE meeting, excluding this waiver submission, the SBE has received and approved 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 CCESD may utilize state and federal special education funds for the placement of this student at JREC. If this waiver is denied, the CCESD may utilize only local funds to support the student’s placement at JREC. The yearly cost for placement at JREC for this student is $313,808.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Curtis Creek Elementary School District Specific Waiver Request Waiver 5-12-2022 (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 Recommendation | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-12-2022 | Curtis Creek Elementary School District (CCESD) | **Requested:** February 1, 2022 to July 31, 2022  **Recommended:** February 1, 2022 to July 31, 2022 | To waive NPS certification to allow the CCESD to use state and federal special education funds for the placement of a student in an uncertified NPS | Approval with conditions | November 29, 2022 | The CCESD may not use state and federal special education funds for the placement of the student at the uncertified NPS | Yes,  Waiver  #2-8-2020 |

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# Attachment 2: Curtis Creek Elementary School District Specific Waiver Request Waiver 5-12-2022

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 5572355

Waiver Number: 5-12-2022

Active Year: 2022

Date In: 12/9/2022 10:34:57 AM

Local Education Agency: Curtis Creek Elementary

Address: 18755 Standard Rd.

Sonora, CA 95370

Start: 2/1/2022

End: 7/31/2022

Waiver Renewal: Yes

Previous Waiver Number: 2-8-2020

Previous SBE Approval Date: 7/8/2021

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: Ed Code or *CCR* to Waive: *EC* 56366 (d)

Outcome Rationale: The Parents of a student eligible for special education services ("Student") who resides within our SELPA boundaries is was placed by a judge through a due process hearing decision in a non-CDE approved residential treatment center (RTC), Judge Rotenberg Center ("JRC") located in Massachusetts, since December 2020. Student continued to present with significant learning and social-emotional needs and benefited from participation in the JRC program. Student was anticipated to be negatively impacted if he were to transition to a CDE approved RTC. Curtis Creek is seeking a renewed non-public waiver from February 1, 2022 through July 31, 2022.

Student Population: 1

City Type: Rural

Local Board Approval Date: 11/29/2022

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Stacy Wheat

Position: Executive Director, SELPA

E-mail: [swheat@tcsos.us](mailto:swheat@tcsos.us)

Telephone: 209-536-2054

Bargaining Unit Date: 12/08/2022

Name: California School Employees Association, Sonora, C

Representative: Joseph Espinoza

Title: Labor Representative

Phone: 209-533-1083

Position: Neutral

Bargaining Unit Date: 11/16/2022

Name: Curtis Creek Certificated Association

Representative: Beth McIlroy

Title: President

Phone: 209-533-1083

Position: Neutral