

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationMay 2021 AgendaItem #W-10

## Subject

Request by the **Paso Robles Joint 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 Delta, Utah.

## Waiver Number

2-1-2021

## Type of Action

Action

## Summary of the Issue(s)

The Paso Robles Joint Unified School District (PRJUSD) requests to waive California *Education Code* (*EC)* Section56366(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 White River Academy (WRA), an uncertified school with a residential treatment center (RTC), in Delta, Utah. The WRA is currently not certified by the California Department of Education (CDE) as a certified nonpublic school (NPS). The WRA is also not licensed and certified as a private school and RTC by the state of Utah. The *EC* Section 56365(h) states that, “In addition to meeting the requirements of *EC* [Section 56366.1](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000205&refType=LQ&originatingDoc=I4444e361134411e9af56bc583e73587f&cite=CAEDS56366.1), a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the federal Individuals with Disabilities Education Act (IDEA)”.

The PRJUSD has not requested a child specific NPS certification waiver, previously, for this student. Documents submitted by the PRJUSD confirm the 16-year-old student was unilaterally placed at the WRA by the parent, who subsequently filed for due process with the Office of Administrative Hearings (OAH), requesting reimbursement and continued placement at the WRA. The PRJUSD settled the case during mediation at the advice of counsel, agreeing to maintain the parent’s selected placement at the WRA. However, no evidence was provided that the agreement was ratified or approved by the local governing board as required by the OAH mediation agreement.

## Background

Under the federal IDEA, students with disabilities must be offered a free appropriate public education (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 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 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.

## Recommendation

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

The PRJUSD submitted supporting documents as part of the waiver submission process. The CDE recommends denial, for the period requested, July 1, 2020, through July 1, 2021. The WRA is not authorized by the Utah State Board of Education (USBE) to provide special education services to students with disabilities under the IDEA. The *EC* Section56365(h) states that, “In addition to meeting the requirements of *EC* Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the federal IDEA”.

If the California State Board of Education (SBE) agrees with the CDE’s recommendation to deny a waiver of *EC* Section 56366(d),the PRJUSD will not be authorized to use state and federal special education funds for the placement of the student at the WRA for the period requested.

However, should the SBE disagree with the CDE’s recommendation of denial and approve the waiver, CDE recommends that the approval include the following conditions:

* The PRJUSD will review the student’s placement through an onsite visit to the school at least two times during the period of this waiver. 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 due to COVID-related travel restrictions.
	+ After each onsite visit, or real-time virtual consultation, as applicable, the PRJUSD 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 PRJUSD will consult with the WRA 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 PRJUSD 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 PRJUSD 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 PRJUSD meets the conditions of the waiver.

## Summary of Key Issues

The PRJUSD has not previously requested a waiver for the placement of the student in an uncertified NPS. The requested period for this waiver submission is from July 1, 2020, through July 1, 2021.

Documents submitted by the PRJUSD confirm the 16-year-old student was unilaterally placed at the WRA by the parent, who subsequently filed for due process with the OAH, requesting reimbursement and continued placement at the WRA. Prior to that placement, the student attended the Paso Robles High School. The student received special education services through specialized academic instruction in Math and study skills. He also had a behavior support plan and individual counseling provided by the school psychologist. The PRJUSD settled the case during mediation at the advice of counsel, agreeing to maintain the parent’s selected placement at the WRA. However, no evidence was provided to indicate the agreement was ratified or approved by the local governing board as required by the OAH mediation agreement. The PRJUSD counsel advised the PRJUSD to continue the current placement at the WRA, and the IEP team members agreed. The PRJUSD believes that the WRA is the appropriate placement for the student at this point as the student has been very successful since enrollment.

The WRA is not authorized by the USBE to provide special education services to students with disabilities under the IDEA. The *EC* Section 56365(h) states that, “In addition to meeting the requirements of *EC* Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction to pupils under the federal IDEA”. According to the CDE, SED, Focused Monitoring and Technical Assistance, Unit 6, this is one of the reasons why the CDE has not certified the WRA as an NPS. The *EC* Section 56345, requires an IEP to be developed and implemented for students with disabilities determined eligible for special education and services by an IEP team. However, in a letter dated October 19, 2020, the WRA office manager states the private school does not “fall under federal guidelines of the IDEA”, and does not follow an IEP. The WRA further states that it offers “private school plans (PSPs)” in lieu of an IEP, and caters the curriculum to meet the needs of individual students. The PRJUSD provided no evidence of attempts to place the student at a certified NPS within the state of California or a certified NPS outside the state of California.

Since the WRA is not certified by the USBE and it does not follow the IEP process, the CDE is recommending denial of this waiver.

**Demographic Information:** The PRJUSD has a student population of 6,869 and is located in a small city in San Luis Obispo County.

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

Since the September 2018 SBE meeting, excluding this waiver submission, the SBE has received and approved 10 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 PRJUSD may utilize state and federal special education funds for the placement of this student at the WRA. If this waiver is denied, the PRJUSD may utilize only local funds to support the student’s placement at the WRA. The yearly cost for placement at the JREC for this student is $ 231,126.59.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** PRJUSD Specific Waiver Request 2-1-2021 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-1-2021 | Paso Robles Joint Unified School District (PRJUSD) | **Requested:**July 1, 2020, to July 1, 2021**Recommended:** The CDE recommends denial of the waiver | To waive NPS certification to allow the PRJUSD to use state and federal special education funds for the placement of a student in an uncertified NPS | Denial of the waiver. | 10/13/2020 | The PRJUSD 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: March 2021

# Attachment 2: Paso Robles Joint Unified School District Specific Waiver Request 2-1-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4075457

Waiver Number: 2-1-2021

Active Year: 2021

Date In: 1/5/2021 11:21:47 AM

Local Education Agency: Paso Robles Joint Unified

Address: 800 Niblick Rd.

Paso Robles, CA 93446

Start: 7/1/2020

End: 7/1/2021

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: This is a request by the Paso Robles Joint Unified School District for approval of a specific waiver to the CDE to waive California *EC* Section 56366.1, the requirement for state certification to allow an uncertified out-of-state nonpublic school called White River Academy, located in Utah, to provide services to a California student with disabilities.

Outcome Rationale: The student was unilaterally placed in this RTC/NPS by the parent in the spring of 2020. A due process was filed and the district settled the case through a settlement agreement. After researching the placement and examining the unique student needs and in discussion with the district counsel, the district believes that White River Academy (WRA) is the most appropriate placement to meet the student's unique needs.

Student Population: 36

City Type: Rural

Local Board Approval Date: 10/13/2020

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Terry Hollen

Position: Director of Special Education

E-mail: [thollen@pasoschools.org](file://CDE.Cal/DATA/SEDATA/CENTRAL/Director%27s%20Office/State%20Board%20of%20Education/Waivers/Current%20Waiver%20Templates/thollen%40pasoschools.org)

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