

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education May 2022 Agenda Item #W-05

## Subject

Request by **Rialto Unified School District (RUSD) and the East Valley Special Education Local Plan Area (EVSELPA)** 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 student with disabilities at Devereux Texas Treatment Network (DTTN), an uncertified out-of-state school for students with disabilities located in League City, Texas.

## Waiver Number

5-11-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The RUSD and the EVSELPA request to waive California *EC* Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of a student with disabilities at DTTN. DTTN was certified as a nonpublic, nonsectarian school (NPS) in California through December 31, 2021, at which time DTTN’s certification was retired because DTTN no longer met the requirements for California certification subsequent to the Texas Education Agency (TEA) suspension of DTTN’s education program.

The RUSD and the EVSELPA have not previously requested a child specific NPS waiver for this student. The RUSD placed the student at DTTN in March 2021, when the NPS was certified in California. Since RUSD became aware of DTTN’s impending California certification retirement in December 2021, RUSD contacted four other out-of-state California certified NPS placement options, and acceptance was denied at all of these NPSs for this student, whose special education eligibility category is identified as Emotional Disturbance and a secondary eligibility of Other Health Impaired. These NPSs indicated their programs did not include adequate support services to address the student’s behaviors that include self-harm and elopement or they were at capacity and could not offer a placement. As such, none of these facilities could ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE).

The Individualized Education Plan (IEP) team agreed that DTTN, which was already serving the student and was able and willing to continue to meet the student’s comprehensive and unique needs, was the least restrictive environment (LRE) to provide the student with a FAPE; therefore, the IEP team recommended that the student continue placement at DTTN into 2022 after California certification is retired.

## Background

Under the federal Individuals with Disabilities Education Act, students with disabilities must be offered a FAPE in the LRE. Local Education 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, the student’s parent(s) or guardian(s), and others, as applicable, to decide placement and 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 placements.

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 school 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 private school sites 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 submits all required documentation and the Special Education Division (SED) performs a detailed analysis of the documentation. After the analysis, the SED decides whether or not to recommend approval of the waiver and, if approval is recommended, whether or not to include conditions specific to the waiver.

## Recommendation

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

The RUSD and the EVSELPA submitted all required documents as part of the waiver submission process. The SED recommends approval of this waiver, with conditions, for the period beginning January 1, 2022, through December 31, 2022. This recommendation for approval is contingent upon the following conditions:

* The RUSD will consult and coordinate with the EVSELPA and the East Valley Office of Education to review the student’s placement via either an on-site visit to the school or a real-time virtual consultation, at least two times during the period of this waiver. The on-site 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 RUSD 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 RUSD will consult with the DTTN 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 RUSD will contact the student and the individual who legally holds the educational rights of the student no less than monthly to discuss progress and address any concerns.
* The RUSD 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 if there are any changes needed in the student’s academic and/or therapeutic program.

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

## Summary of Key Issues

The RUSD has not previously requested a waiver for the placement of the student in an uncertified private school. The recommended period for this waiver submission is January 1, 2022, to December 31, 2022.

Prior to this student’s placement at DTTN in March 2021, the student eloped out of a treatment center in California which raised the level of safety concerns to warrant an out- of-state placement capable of monitoring the student and elopement. The nature and seriousness of the student’s behavior resulted in increased safety concerns. The student struggles with self-harming behaviors (swallowing, head banging), physical aggressive behavior towards peers and adults and high risk of elopement. She has psychotic features and hears voices to harm self and others. Currently with her behaviors, it has been difficult to find another California certified out-of-state NPS placement.

The IEP team, which included the educational rights holder, agreed the DTTN, an uncertified NPS, is the LRE to meet the student’s unique needs. The DTTN accepted the student into their program and student has been showing progress. The IEP Team further determined that moving the student would be extremely detrimental to the student's mental health and treatment. The RUSD has monitored the student’s progress and reports the student has been more successful at the DTTN. RUSD also reported the student is utilizing the treatment and demonstrating improvement, yet still exhibiting signs of the need for such a restrictive placement, at the DTTN.

The IEP team, which includes the educational rights holder, agrees that maintaining enrollment at DTTN, now an uncertified school, is the most appropriate placement to continue to meet the student’s unique needs. The RUSD has monitored the student’s progress and reports the student has been successful at DTTN. The RUSD anticipates December 31, 2022, to be the date the student will return to the RUSD.

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

**Demographic Information:** The RUSD has a student population of 24,461 and is located in an urban area in San Bernardino 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 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 RUSD may utilize state and federal special education funds for the placement of this student at the DTTN. If this waiver is denied, the RUSD may utilize only local funds to support the student’s placement at the DTTN.

The yearly cost for placement at the DTTN for this student is $172,352 for 12 months.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** RUSD Specific Waiver Request 5-11-2021 (1 page)

(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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-11-2021 | RUSD and EVSELPA | **Requested:** January 1, 2022, to December 31, 2022  **Recommended:**  January 1, 2022, to December 31, 2022 | To waive NPS certification to allow the RUSD and the EVSELPA to use state and federal special education funds for the placement of a student in an uncertified out-of-state residential school | Approval with conditions | 11/16/2021 | The RUSD and the EVSELPA may not use state and federal special education funds for the placement of the student at the uncertified out-of-state residential school | None |

Created by California Department of Education: January 2021

# Attachment 2: Waiver 5-11-2021 Rialto Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CDE Code: 3667850

Waiver Number: 5-11-2021

Active Year: 2022

Date In: 11/22/2021 4:13:35 PM

Local Education Agency: Rialto Unified School District

Address: 182 East Walnut Ave.

Rialto, CA 92376

Start: 1/1/2022

End: 12/31/2022

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366.1(a) **Revision: 56366(d)**

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: 56366.1. **Revision: 56366 (d**),

Outcome Rationale: The RUSD and the EVSELPA request to waive *EC* Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the continuing placement of a student with disabilities at DTTN in League City, Texas, a previously certified NPS, currently suspended by the TEA and retired by the CDE as a certified NPS effective January 1, 2022.

Student was enrolled at Devereux Texas in March 2021. The student continues to struggle with self-harming behaviors (swallowing, head banging), physical aggressive behavior towards peers and adults and high risk of elopement. The IEP Team determined that moving the student would be extremely detrimental to the student's mental and physical health.

Student Population: 24461

City Type: Urban

Local Board Approval Date: 11/16/2021

Audit Penalty Yes or No: N