

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationMarch 2023 AgendaItem #W-07

## Subject

Request by the **Mountain Empire Unified School District** to 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 high school student with disabilities at the Judge Rotenberg Educational Center, an uncertified nonpublic school for students with disabilities with a residential treatment center located in Canton, Massachusetts.

## Waiver Number

8-9-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Mountain Empire Unified School District (MEUSD) is seeking a 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 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 has requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. The waiver for this student was previously approved by the State Board of Education (SBE) during the November 2021 meeting, W-09. The MEUSD submitted documentation meeting the required conditions for the prior waiver. The prior waiver approved the placement of the student at JREC until June 30, 2022. This renewal would allow the student to stay in the current placement until June 30, 2023.

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.

The MEUSD considers this uncertified NPS to be more appropriate to provide education and services for this student rather than certified NPSs because no other facilities have identified that they have the space or capability of meeting the student's needs.

## 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 Individualized Education Program 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 provided the CDE with all required waiver submission documents. The CDE has reviewed these documents and recommends approval of this waiver, with conditions, for the time period the student is placed at the JREC, July 1, 2022 through June 30, 2023. This recommendation of approval is contingent upon the following conditions:

* The MEUSD will review the student’s placement through an on-site visit to the school 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 due to COVID-related travel restrictions.
	+ After each onsite visit the MEUSD shall provide written reports to the CDE’s 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 MEUSD 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. The monthly consultation will also include a 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 will contact the student and the individual who holds the educational rights of the student, each month, to discuss the student’s progress and to address any concerns.
* The MEUSD 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 states 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. Additionally, the 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 2020–2021 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 being injured.

The JREC has been the only NPS with an RTC that accepted the student's application. Upon researching and virtually touring the facility, the MEUSD believes the JREC 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 IEP team still believes this placement is the only location at this time where the student will receive educational benefit and FAPE. Over the last year in this placement the student has seen small successes and growth. These are noted in the student’s most recent IEP.

The MEUSD anticipates June 30, 2023, to be the date the student will return to the MEUSD.

**Demographic Information:** The MEUSD has a student population of 4,042 and is located in a rural area in San Diego 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 29 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 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 JREC. The yearly cost for placement at JREC for this student is $465,741.89.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** MEUSD Specific Waiver Request 8-9-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 8-9-2022 | Mountain Empire Unified School District (MEUSD) | **Requested:**July 1,2022, to June 30, 2023**Recommended:** July 1,2022, to June 30, 2023 | To waive 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 | 8/9/2022 | The MEUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | 11-3-2021W-09 |

Created by California Department of Education: December 2022

# Attachment 2: Waiver 8-9-2022 Mountain Empire Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768213

Waiver Number: 8-9-2022

Active Year: 2022

Date In: 9/30/2022 11:12:20 AM

Local Education Agency: Mountain Empire Unified

Address: 3305 Buckman Springs Rd.

Pine Valley, CA 91962

Start: 7/1/2022

End: 6/30/2023

Waiver Renewal: Y

Previous Waiver Number: 2-7-2021-W-09

Previous SBE Approval Date: 11/3/2021

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: The Mountain Empire Unified School District and East County Special Education Local Plan Area (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 renewal waiver for the placement of a high school student who meet 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 previously [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 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 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: 8/9/2022

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Jon McEvoy

Position: Director Special Education/Human Resources

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Bargaining Unit Date: 06/23/2022

Name: CSEA

Representative: Jennifer Platt

Title: CSEA President

Phone: 619-473-8869

Position: Support

Comments: