

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education November 2021 Agenda Item #W-08

## Subject

Request by the **Lake Elsinore 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 middle school student with disabilities at an uncertified out-of-state school for students with disabilities located in Troy, Montana.

## Waiver Number

* 25-6-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Lake Elsinore Unified School District (LEUSD), on behalf of the Sycamore Academy of Science and Cultural Arts (SASCA) Charter School and the El Dorado County Charter Special Education Local Plan Area (SELPA) request to waive California *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 with disabilities at the Turning Winds (TW), an uncertified school for students with disabilities with a residential treatment center (RTC), in Troy, Montana.

The LEUSD, the SASCA and the El Dorado County Charter SELPA have not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to the placement of the student at the TW, the LEUSD and SASCA exhausted all local educational agency (LEA) placement options before contacting twelve, California certified in-state and out-of-state NPS having RTCs to find a suitable placement for the student. The student, whose special education eligibility category is identified as emotional disturbance, has had numerous 5150 and one 5250 holds within a four month period of time. Additionally, the student was a flight risk. There was a reported incident that occurred at the airport where airport security had to intervene. After careful consideration of all available in-state options and recommendations from other local RTC facilities, this placement was mutually agreed upon by the parents and the individualized education program (IEP) team. The IEP team had significant and immediate concerns that, without the placement at TW, there would be more psychiatric holds and a continued risk to flee. This program was selected by the IEP team for this student as no California certified in-state or out-of-state program provided the appropriate safeguards that the IEP team concluded were necessary to protect the health and safety of the student and to provide a free and appropriate public education (FAPE) for the student. The TW is accredited by Northwest Accreditation Commission and the National Independent Private Schools Association. The TW is also licensed by the state of Montana.

The IEP team agreed the TW, an uncertified school and RTC, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE. The student was placed in the TW program on February 19, 2021.

## 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 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 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 LEUSD, the SASCA, and the El Dorado County Charter SELPA submitted supporting documents as part of the waiver submission process. The CDE recommends approval of the waiver with conditions, for the period of February 19, 2021, to February 18, 2022.

If the State Board of Education (SBE) agrees with the CDE’s recommendation to approve the waiver with conditions, the LEUSD, SASCA, and the El Dorado County Charter SELPA will be authorized to use state and federal special education funds for the placement of the student at the TW for the period requested.

The CDE recommends that the approval include the following conditions:

* The LEUSD, the SASCA, and the El Dorado County Charter SELPA will review the student’s placement through an on-site visit to the school at least two times during the period of this waiver.
  + After each on-site visit, the LEUSD, the SASCA, and the El Dorado County Charter SELPA 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 on-site review.
* The LEUSD, the SASCA, and the El Dorado County Charter SELPA will consult with the TW 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 LEUSD, the SASCA, and the El Dorado County Charter SELPA 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 LEUSD, the SASCA, and the El Dorado County Charter SELPA 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 LEUSD and the SASCA meets the conditions of the waiver. During the time while the student has been currently placed at TW, the LEUSD and SASCA have been meeting the above waiver conditions.

## Summary of Key Issues

The LEUSD, the SASCA and the El Dorado County Charter SELPA have not requested a child specific NPS certification waiver, previously, for this student. The recommended period for this waiver submission is February 19, 2021, to February 18, 2022.

Prior to the placement of the student at the TW, the LEUSD and the SASCA exhausted all LEA placement options before contacting multiple in-state and out-of-state NPS having RTCs to find a suitable placement for the student. The student, whose special education eligibility category is identified as emotional disturbance, has had numerous 5150 and one 5250 holds within a four month period of time. The student was placed on an involuntary hold at Del Amo Hospital October 21, 2020, and was transferred on October 26, 2020, to Discovery’s Mental Health residential program beginning October 26, 2020, and discharged on November 30, 2020. An aftercare plan was developed with Discovery Mood and Anxiety Program, California virtual Partial Hospitalization Program on December 1, 2020. The goals at the time were in the areas of assertive communication skills, dialectical behavior therapy distress tolerance skills, emotion regulation skills, interpersonal effectiveness skills, and radical acceptance skills. The student was placed on an involuntary hold on January 20, 2021, and was released to a parent. The student was receiving outpatient services through Discovery Mood at the time. The student continues to have significant mental health and behavioral needs. Additionally, the student was a flight risk. There was a reported incident that occurred at the airport where airport security had to intervene. After careful consideration of twelve California certified in-state and out-of-state options and recommendations from other local RTC facilities, this placement was mutually agreed upon by the parents and the IEP team. The IEP team had significant and immediate concerns that, without the placement at TW, there would be more psychiatric holds and a continued risk to flee. This program was selected by the IEP team for this student as no California certified in-state or out-of-state program provided the appropriate safeguards that the IEP team concluded were necessary to protect the health and safety of the student and to provide a FAPE for the student.

The IEP team agreed the TW, an uncertified school and RTC, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE. The student was placed in the TW program on February 19, 2021, is anticipated to return back to the LEA on February 19, 2022.

**Demographic Information:** The LEUSD has a student population of 21,081 and is located in a suburban area in Riverside 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 18 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 LEUSD and the SASCA may utilize state and federal special education funds for the placement of this student at TW. If this waiver is denied, the LEUSD and the SASCA may utilize only local funds to support the student’s placement at TW. The yearly cost for placement at TW for this student is $145,800.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** LEUSD Specific Waiver Request 25-6-2021 (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 | Local Educational Agency (LEA) | Period of Request | LEA’s Request | CDE Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 25-6-2021 | Lake Elsinore Unified School District (LEUSD), on behalf of the Sycamore Academy of Science and Cultural Arts (SASCA) Charter School and the El Dorado County Charter Special Education Local Plan Area (SELPA) | **Requested:**  January 31, 2021, to February 1, 2022  **Recommended:** February 19, 2021 to February 18, 2022 | To waive nonpublic school (NPS) certification to allow the LEUSD and SASCA 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 | 6/21/2021 | The LEUSD and SASCA 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, September 2021

# Attachment 2: Lake Elsinore Unified School District Specific Waiver Request 25-6-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3375176

Waiver Number: 25-6-2021

Active Year: 2021

Date In: 6/30/2021 4:35:16 PM

Local Education Agency: Lake Elsinore Unified

Address: 545 Chaney St.

Lake Elsinore, CA 92530

Start: 1/31/2021

End: 2/1/2022

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: *Education Code* 56366

Outcome Rationale: The student has had numerous 5150 and one 5250 holds within a 4-month period of time. Additionally the student is a flight risk. There is a reported incident that occurred at the airport where airport security had to intervene. After careful consideration of all available in-state options and recommendations from other local Residential Treatment facilities this placement was mutually agreed upon by the parents and supported by the IEP team. The IEP team had significant and immediate concerns that without placement there would be more psychiatric holds and a continued risk to flee. This program was selected by the IEP team for this student as no in-state program provided the appropriate safeguards that the IEP team concluded were necessary to protect the health and safety of the student. Due to the COVID restrictions in the state, the team had limited options and we were unable to conduct a site visit.

Student Population: 45

City Type: Urban

Local Board Approval Date: 6/21/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Sandra Dunn

Position: Director of Special Education

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