

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationNovember 2022 AgendaItem #W-05

## Subject

Request by the **Morongo 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 Sandy Pines Residential Treatment Center, an uncertified nonpublic school for students with disabilities with a residential treatment center, in Jupiter, Florida.

## Waiver Number

14-4-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Morongo Unified School District (MUSD) 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 Sandy Pines Residential Treatment Center (Sandy Pines), an uncertified school for students with disabilities with a residential treatment center (RTC), in Jupiter, Florida.

The MUSD has not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to the placement of the student at the Sandy Pines, the MUSD 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 within and outside of California were contacted. All of these facilities 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 mental health concerns. As background, the MUSD indicates that the student was found eligible for an individual education program (IEP) due to emotional disturbance. In addition, the student had multiple extended involuntary hospitalizations with no sustained improvement. Therefore, the MUSD concluded that due to risk of injury to student and others, residential placement was agreed to as the LRE to provide FAPE. The student’s prior history of serious mental health concerns, self-injurious behaviors, and suicide ideation has made finding an appropriate facility difficult.

## 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 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

The MUSD 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 Sandy Pines, April 29, 2022 through April 28, 2023. This recommendation of approval is contingent upon the following conditions:

* The MUSD 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 MUSD 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 MUSD will consult with the Sandy Pines 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 MUSD 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 MUSD 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 State Board of Education (SBE) to ensure the MUSD meets the conditions of the waiver.

## Summary of Key Issues

The MUSD reached out to several in-state and out-of-state NPSs; of the three uncertified NPS/RTC that accepted the student’s application, only the Sandy Pines had the services available to meet the student’s high level of needs. This was determined upon researching and virtually touring the facility. Additionally, Sandy Pines provides therapeutic supports to address the student's extreme needs. The MUSD IEP team feels this placement is the best location at this time where the student will receive educational benefit and FAPE. Without an appropriate placement, the IEP team believes that the student's history of false accusations, suicidal ideation and intense aggressive behaviors will continue and increase. The MUSD anticipates April 28, 2023 to be the date the student will return to the MUSD.

**Demographic Information:** The MUSD has a student population of 7,580 and is located in a rural area in San Bernardino County.

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

Since the September 2019 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 28 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 MUSD may utilize state and federal special education funds for the placement of this student at the Sandy Pines. If this waiver is denied, the MUSD may utilize only local funds to support the student’s placement at Sandy Pines. The yearly cost for placement at Sandy Pines for this student is $278,985.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** MUSD Specific Waiver Request 14-4-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 14-4-2022 | Morongo Unified School District (MUSD) | **Requested:**April 29, 2022, to April 28, 2023**Recommended:** April 29, 2022, to April 28, 2023 | To waive NPS certification to allow the MUSD 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 | 4/19/2022 | The MUSD 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 2022

# Attachment 2: California Department of EducationWAIVER SUBMISSION – Specific

CD Code: 3667777

Waiver Number: 14-4-2022

Active Year: 2022

Date In: 4/26/2022 2:29:00 PM

Local Education Agency: Morongo Unified

Address: 5715 Utah Trail

Twentynine Palms, CA 92277

Start: 4/29/2022

End: 4/28/2023

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(d)

Ed Code Authority: 56101

Ed Code or CCR to Waive: [(d) A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the nonpublic, nonsectarian school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.]

Outcome Rationale: Morongo Unified School District and SELPA are seeking a waiver for placement of a high school student eligible for an IEP under Emotional Disturbance. The student has acted on suicidal ideation resulting in need for medical intervention, been physically assaultive, made false accusations of sexual assault to law enforcement, and has severe mood lability. Student has had multiple involuntary holds in the past year resulting in extended hospitalizations without sustained improvement in behavior or mood.

Applications to multiple certified facilities, both in California and out of state, were all declined due to severity of student’s needs, or lack of services necessary for the student to receive a FAPE. Only the facility for which the waiver is requested has accepted the student’s application.

The facility was toured and provides a well-defined positive behavior intervention program, multiple levels of support, and supervision levels that can address the student’s self-injurious, intense aggressive behaviors, and mental health needs. The IEP team feels this is the only location at this time where the student will receive educational benefit.

Without an appropriate placement, the IEP team believes the student’s behaviors will lead to significant injury to the student, to others, continued suicide attempts, or even death.

Student Population: 7580

City Type: Rural

Local Board Approval Date: 4/19/2022

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Eric Smith

Position: SELPA Program Specialist

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