

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education January 2020 Agenda Item #W-09

## Subject

Request by **Chico Unified School District** for a renewal waiver ofCalifornia *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 school for students with disabilities located in Delta, Utah.

## Waiver Number

8-7-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Chico Unified School District (CUSD) requests 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 high school student with disabilities at the White River Academy (WRA), an uncertified school for students with disabilities with a residential treatment center (RTC) in Delta, Utah.

The CUSD requested a child specific nonpublic school (NPS) certification waiver last year for this student to be placed at the WRA. The SBE approved the waiver with conditions at the 2018 September State Board of Education (SBE) meeting. Prior to the placement at the WRA, the CUSD 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. The student was denied admission to several certified NPSs with a RTC component due to their diagnosis of emotional disturbance (ED) and pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections (PANDAS).

The Individualized Education Program (IEP) team agreed the WRA, an uncertified school and RTC, is able to meet the student’s comprehensive, unique needs to provide the student with a free appropriate public education (FAPE). The student was placed in the WRA’s program on April 3, 2018. The SBE approved the CUSD’s waiver for the requested period of April 3, 2018, to June 30, 2019, allowing them to use state and federal funds for the student’s placement at the WRA. The student’s IEP team agrees the WRA continues to be the most appropriate placement for the student.

**Background**

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the least restrictive environment (LRE). 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 parents must be included in the decision-making process and must provide written consent to 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 SED will recommend approval of the waiver with conditions that are specific to the waiver.

## Recommendation

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

As the CUSD has submitted all required documents as part of its waiver request, the CDE recommends approval of this waiver, with conditions, for the period requested: July 1, 2019 through June 30, 2020. This recommendation for approval is contingent upon the following conditions:

* The CUSD will consult and coordinate with their special education local plan area and the Butte County Office of Education to review the student’s placement through on-site visits to the school at least two times during the period of this waiver.
  + After each onsite visit, the CUSD shall provide written reports to the CDE Special Education Division (SED) documenting the findings of the visit. 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 CUSD will consult with the WRA liaison monthly to monitor the provision of services and review the student’s progress via email and/or phone calls, and 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 CUSD will contact the student and the student’s parents monthly to discuss progress and address any concerns.
* The CUSD will schedule IEP meetings 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 to ensure the CUSD meets the conditions of the waiver.

## Summary of Key Issues

The CUSD requested a waiver last year after placing a student diagnosed with ED and PANDAS at the WRA, an uncertified NPS and RTC in Delta, UT. The SBE approved the waiver for the requested period of April 3, 2018 to June 30, 2019.

Prior to this student’s placement at WRA, the student attended his local public high school. Due to his ED and PANDAS symptoms, the student had great difficulty staying focused long enough to process and retain the information being taught. Chico USD attempted progressively more restrictive placement options until reaching the point where the IEP team and the student’s parents agreed that residential placement was appropriate.After exhausting all district placement options, the CUSD contacted one in-state and five out-of-state certified NPSs with RTCs to provide a FAPE to the student. These certified NPSs denied admission due to concerns about their ability to accommodate a student diagnosed with PANDAS, or did not have a bed available to meet the timing constraints of the student’s placement. The IEP team, which include the student’s parents, agreed the WRA, an uncertified school and RTC in Delta, UT, is the most appropriate placement to meet the student’s unique needs. The WRA accepted the student into their program and has been able to meet the student’s needs.

The CUSD has monitored the student’s progress and reports the student has been successful at the WRA. The WRA administrator has also reported the student is responding well, both academically and therapeutically, at the WRA. The IEP team believes the student requires the continuity of their current placement and treatment team to continue to progress. They agree the WRA continues to be the most appropriate placement for the student.The CUSD anticipates June 30, 2020 to be the date the student will return to CUSD.

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

**Demographic Information:** The CUSD has a student population of 12,423 and is located in a small city in Butte County.

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

Within the past two years, the State Board of Education has received and approved 9 waivers similar to this allowing LEAs to waive *EC* Section 56366.1(a), the requirement for state certification.

## Fiscal Analysis (as appropriate)

If this waiver is approved, the CUSD may utilize state and federal special education funds for the placement of this student at the WRA. If this waiver is denied, the CUSD may utilize only local funds to support the student’s placement at the WRA.

The yearly cost for placement at the WRA for this student is $74,596. This cost is based on 180 days of regular school year instruction, 20 days of extended year instruction, and 365 days of room and board.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Chico Unified School District Specific Waiver Request   
  8-7-2017 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 56366 (d)

| Waiver Number | District | Period of Request | District’s Request | CDE Recommended | Local Board and Public Hearing Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 8-7-2019 | Chico Unified School District (CUSD) | **Requested:**  July 1, 2019, to June 30, 2020  **Recommended:**  July 1, 2019, to June 30, 2020 | To waive nonpublic school (NPS) certification to allow CUSD to use state and federal special education funds for the placement of a student in an uncertified out-of-state NPS | Approval with conditions for the period requested | June 19, 2019 | The CUSD may not use state and federal special education funds for the placement of the student at the uncertified out-of-state NPS | Renewal of  20-5-2018-W-11 September 2018 SBE Meeting |

Created by California Department of Education

September 2019

# Attachment 2: Waiver 8-7-2019 Chico Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 0461424

Waiver Number: 8-7-2019

Active Year: 2019

Date In: 7/10/2019 1:06:07 PM

Local Education Agency: Chico Unified School District

Address: 1163 East Seventh St.

Chico, CA 95928

Start: 7/1/2019

End: 6/30/2020

Waiver Renewal: Yes

Previous Waiver Number: 20-5-2018

Previous SBE Approval Date: 5/24/2018

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: [(a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the Superintendent on forms provided by the department, and shall include all of the following information on the application: (1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification. (2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification. (3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered. (4) An annual operating budget. (5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations that include criminal record summaries required of all nonpublic, nonsectarian school or agency personnel having contact with minor children under Section 44237.]

Outcome Rationale: Butte County Office of Education contacted in-state nonpublic schools and nonpublic school agencies, and residential treatment centers to offer FAPE to one student who has been determined to have emotional/mental health needs. However, none of these placement options would accept the student, or could not meet the student's comprehensive, unique needs. The uncertified out-of-state nonpublic school, White River Academy, located in Delta, Utah, accepted the student.

Student Population: 12423

City Type: Small

Local Board Approval Date: 6/19/2019

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Diane Olsen

Position: Director

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Telephone: 530-891-3000 x20138

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Bargaining Unit Date: 06/19/2019

Name: CUTA - Chico Unified Teachers Assn.

Representative: Kevin Moretti

Title: President

Position: Support

Comments: