

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationJanuary 2020 AgendaItem #W-10

## Subject

Request by **Lake Elsinore Unified School District on behalf of the Sycamore Academy of Science and Cultural Arts**, 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 school for students with disabilities located in Troy, Montana.

## Waiver Number

13-7-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Lake Elsinore Unified School District, on behalf of the Sycamore Academy of Science and Cultural Arts (SASCA) charter school, requests to waive California *Education Code* (*EC*) Section 56366(d). This *EC* section includes the requirement for state certification, to allow them to use federal and state special education funds for the placement of one high school student with disabilities at the uncertified out-of-state school for students with disabilities, Turning Winds Residential Treatment Center (TWRTC) located in Troy, Montana.

The SASCA is a nonprofit charter school that serves as a local educational agency (LEA) for the purpose of providing special education services to individuals with exceptional needs pursuant to *EC* Section 56028.5. The SASCA is the public agency responsible for providing special education services to the student.

After exhausting all local placement options, the SASCA contacted multiple in-state and out-of-state nonpublic schools (NPSs) and residential treatment centers (RTCs) to find a placement suitable for one high school student with disabilities requiring immediate placement due to the severity of the student’s social-emotional disabilities. These placement options could not meet the student’s unique needs, or would not accept the student into their program.

The Individualized Education Program (IEP) team, which include the student’s parents, agreed the TWRTC, an uncertified out-of-state school and RTC is able to provide the appropriate safeguards needed to protect the health and safety of the student. The TWRTC accepted the student into their program, and the student was placed in the program on June 10, 2019.

**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 and the uncertified school. If the waiver request meets all of the waiver requirements, the SED will recommend approval of the waiver with conditions.

**Recommendation**

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

As the SASCA has submitted all required documents as part of its waiver request, the CDE recommends approval of this waiver, with conditions, for the period of June 11, 2019, through June 10, 2020. Please note the recommended period of request differs from the SASCA’s original waiver submission as the student was enrolled in the TWRTC on June 11, 2019, not June 10, 2019.

This recommendation for approval is contingent upon the following conditions:

* The SASCA will consult and coordinate with the El Dorado Charter Special Education Local Plan Area to review the student’s placement through on-site visits to TWRTC at least two times during the period of this waiver.
	+ After each onsite visit, the SASCA 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 SASCA will consult with the TWRTC liaison monthly via email and/or phone calls to monitor the provision of services, review the student’s progress, and review program data. Program data will include the student’s progress on individualized education program (IEP) goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.
* The SASCA will contact the student and each of the student’s parents monthly to discuss treatment progress and address concerns.
* The SASCA will schedule IEP meetings at a minimum of every four months to review program data; the student’s progress, both academic and therapeutic, and determine any necessary changes that may be needed in the student’s academic and/or therapeutic program.

If the waiver is approved, the SED will monitor to ensure the SASCA meets the conditions of the waiver.

## Summary of Key Issues

In the months preceding the placement of the student at TWRTC, the student attempted suicide and survived a six-day coma after which the student continued to present suicidal ideation and required hospitalization three additional times. The SASCA recognized the student had significant needs and required an immediate placement in a RTC for the LEA to provide the student with a FAPE. After exhausting all local placement options, the SASCA contacted eight in-state and six out-of-state NPSs with RTCs to locate an appropriate placement for the student**.** These placement options either could not meet the student’s unique needs or would not accept the student into their programs.

The TWRTC, an uncertified out-of-state school and RTC located in Troy, Montana, offers a therapeutic and academic program that is able to provide the appropriate health and safety safeguards needed to support the student and implement the student’s IEP. The IEP team agreed the TWRTC is the most appropriate placement to meet the student’s unique needs. TheSASCA anticipates June 10, 2020, to be the date the student will return to the SASCA.

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

**Demographic Information:** The SASCA has a student population of 550 and is located in a suburban area in Riverside 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 nine waivers similar to this request allowing LEAs to waive *EC* Section 56366.1(a), the requirement for state certification.

## Fiscal Analysis (as appropriate)

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

The annual cost for placement at TWRTC for this student is $115,400.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Lake Elsinore Unified School District on behalf of the Sycamore Academy of Science and Cultural Arts Specific Waiver Request 13-7-2017 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 13-7-2019 | Lake Elsinore Unified School District on behalf of the Sycamore Academy of Science and Cultural Arts (SASCA) | **Requested:** June 10, 2019, to June 9, 2020**Recommended:** June 11, 2019, through June 10, 2020(The student was enrolled in the Turning Winds Residential Treatment Center on June 11, 2019) | To waive nonpublic school (NPS) certification to allow SASCA 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 of June 11, 2019, through June 10, 2020 | June 10, 2019 | The SASCA may not use state and federal special education funds for the placement of the student at the uncertified out-of-state NPS. | None |

Created by California Department of Education

August 2019

# Attachment 2: Waiver 13-7-2019 Lake Elsinore Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3375176

Waiver Number: 13-7-2019

Active Year: 2019

Date In: 7/22/2019 12:33:53 PM

Local Education Agency: Sycamore Academy of Science and Cultural Arts

Address: 23151 Palomar St.

Wildomar, CA 92595

Start: 6/10/2019

End: 6/9/2020

Waiver Renewal: No

Previous Waiver Number: N/A

Previous SBE Approval Date: N/A

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366.1(a)

Ed Code Authority: 56101 and 56028.5

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: Please note that SASCA is requesting this waiver pursuant to *EC* Section 56028.5, as a charter school that participates as an LEA in a SELPA pursuant to *EC* Section 47641. As such, the charter school's authorizing District may NOT submit this waiver; rather, SASCA must submit the waiver pursuant to *EC* Section 56028.5. The student was identified for special education in kindergarten. SASCA is the student’s ninth California public school placement. The student came to SASCA in August 2018 after three years of homeschooling without any special education support. The student attempted suicide in October 2018 and has been hospitalized three additional times for ideation. The parents are currently involved in a highly contentious custody battle as well, and the student is represented by the student’s own legal counsel. After careful consideration of all available in-state options and recommendations from other local RTCs, this placement was mutually agreed upon by the parents and supported by the student’s psychiatrist, the IEP team, and the student’s legal counsel. There was an urgency to this placement as the school year ended on Friday, June 7, 2019, and there was a significant concern that there would be another suicide or self-harm attempt without an appropriate placement. SASCA does not have any other NPS placements, and TWRTC was selected by the IEP team for this student after it was determined that no in-state program provided the appropriate safeguards necessary to protect the health and safety of the student.

Student Population: 550

City Type: Suburban

Local Board Approval Date: 6/10/2019

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Mr. Richard Hansberger

Position: General Counsel

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