

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education March 2020 Agenda Item #W-11

## Subject

Request by **Pleasanton Unified School District** 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 Doylestown, Pennsylvania.

## Waiver Number

4-12-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Pleasanton Unified School District (PUSD) 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 Foundations of Behavioral Health (FBH), an uncertified nonpublic school for students with disabilities and residential treatment center (RTC) in Doylestown, Pennsylvania (PE).

After exhausting all district placement options, the Pleasanton USD and the Tri-Valley Special Education Local Plan Area (SELPA) contacted six California-certified in-state nonpublic schools with RTCs (NPSs) and 15 California-certified out-of-state NPSs with RTCs to find a placement suitable for a high school student with disabilities requiring immediate placement due to the severity of their disabilities and related behaviors. Of the in-state NPS options, one denied the student’s application, one was declined by the student’s parents, and four responded they could not provide the student with a free appropriate public education (FAPE).

Of the 15 out-of-state schools contacted, one denied the student’s application, one was declined by the parents, one was deemed unacceptable by an individualized education program (IEP) team member, one did not have an immediate opening to place the student, and 11 reported they could not provide this student with a FAPE.

The IEP team, which include the student’s parents, agreed that FBH, an uncertified nonpublic school and RTC, is able to meet the student’s comprehensive, unique needs and provide the student with a FAPE.

The responses of the many schools contacted by the PUSD show the significant supports and service needs of the student, and the need for the placement at the FBH. The student was placed in the FBH program on December 11, 2019.

## Authority for Waiver

*EC* Section 56101

## Recommendation

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

As the PUSD has submitted all required documents as part of its waiver request, the California Department of Education (CDE) recommends approval of this waiver, with conditions, for the period of December 11, 2019, through June 30, 2020. If the student remains at the FBH after the recommended period, the PUSD will have to apply for additional waivers for the periods of July 1, 2020, through June 30, 2021, and July 1, 2021, through February 2, 2022. The PUSD anticipates February 2, 2022, to be the date the student will return to a California placement.

This recommendation for approval is contingent upon the following conditions:

* The Pleasanton USD will consult and coordinate with the Tri-Valley SELPA to review the student’s placement through two on-site visits to the school during the period of the waiver.
  + After each onsite visit, the Pleasanton USD 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 Pleasanton USD will consult with the FBH liaison at least monthly during the term of the waiver to monitor the provision of services, review the student’s progress via email and/or phone calls, and review program data. Program data includes the student’s progress on their IEP goals, school attendance, work completion rate, grades, participation in the therapeutic program, and emergency/incident/safety reports.
* The Pleasanton USD will contact the student and/or the student’s parents at least monthly during the period of the waiver to discuss progress and address any concerns.
* The Pleasanton USD will schedule IEP meetings at a minimum of every six months to review program data and make any necessary changes to the student’s academic and/or therapeutic program.

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

## 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.

## Summary of Key Issues

The PUSD was unable to find an appropriate in-state placement for one high school student with autism due to the student’s age and the severity of the behaviors associated with their disability. The student’s most recent placement was at the certified out-of-state NPS Lakemary in Paola, Kansas. The student’s behavior had escalated at the Lakemary NPS and the IEP team determined the Lakemary NPS was no longer an appropriate placement for the student.

The PUSD was unable to find an appropriate placement for the student after contacting six in-state and 15 out-of-state California-certified NPSs. The IEP team agreed the program at the FBH in Doylestown, Pennsylvania is able to meet the needs of the student and provide them with a FAPE.

If the SBE approves this waiver request, the PUSD will be able to use state and federal special education funds for the placement of this student at the FBH through June 30, 2020.

The PUSD anticipates February 2, 2022, to be the date the student will return to a California placement. If the student remains at the FBH after the recommended period of this waiver they must apply for additional waivers as specified in the waiver Recommendation.

**Demographic Information:** The PUSD has a student population of 11,868 and is located in a suburban area in Alameda 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 allowing LEAs to waive *EC* Section 56366.1(a), the requirement for state certification.

## Fiscal Analysis (as appropriate)

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

The yearly cost for placement at the FBH for this student is $454,907. This cost is based upon the daily rates of $664 for academic instruction and $600 for psychiatric residential treatment.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Pleasanton Unified School District Specific Waiver Request   
  4-12-2019 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 4-12-2019 | Pleasanton Unified School District (PUSD) | **Requested:**  December 11, 2019, to February 2, 2022  **Recommended:**  December 11, 2019, to June 30, 2020  Note: The LEA must apply for additional waivers if the student remains at the FBH after the recommended period of request. | To waive nonpublic school (NPS) certification to allow PUSD 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 | October 8, 2019 | The PUSD may not use state and federal special education funds for the placement of the student at the uncertified out-of-state NPS | No |

Created by California Department of Education

January 2020

# Attachment 2: Waiver 4-12-2019 Pleasanton Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 0175101

Waiver Number: 4-12-2019

Active Year: 2019

Date In: 12/11/2019 10:47:29 AM

Local Education Agency: Pleasanton Unified

Address: 4665 Bernal Ave.

Pleasanton, CA 94566

Start: 12/11/2019

End: 2/2/2022

Waiver Renewal: No

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: Residential Program in Pennsylvania is certified through the state of Pennsylvania and not CDE certified. We are requesting a waiver to be able to place the student at this residential.

Outcome Rationale: The District was unable to find placement for student within California. Student needs placement ASAP and the district was able to locate a residential to meet students needs and have parents agree to in Pennsylvania. The District researched various residential in California and outside California. Due to age, disability, agreement of FAPE, ability to provide FAPE; these residential were not appropriate or rejected. The District found Foundations for Behavioral Health in Pennsylvania that could provide FAPE and have parents and all team members agree.

Student Population: 12

City Type: Urban

Local Board Approval Date: 10/8/2019

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Sohail Ahmed

Position: Program Specialist

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