

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationNovember 2020 AgendaItem #W-08

## Subject

Request by **Hanford Joint Union High School District and the Kings County Special Education Local Plan Area** request 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 by California, out-of-state school for students with disabilities located in Canton, Massachusetts.

## Waiver Number

10-6-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Hanford Joint Union High School District (HJUHSD) and the Kings County 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 high school student with disabilities at the Judge Rotenberg Educational Center (JREC), an uncertified by California school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts.

The HJUHSD and the Kings County 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 JREC, the HJUHSD 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, whose special education eligibility category is identified as emotional disturbance, was denied admission to 34 certified NPSs with a RTC component due to the program and facility design. In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s diagnoses of schizophrenia, bipolar disorder, anxiety disorder, and post-traumatic stress disorder accompanied by behaviors that include self-harm, substance abuse, and violence. Additionally, the facility design of each site lacked the required security which is needed to prevent the student’s flight risk. As such, the facilities could not ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE).

The individualized education program (IEP) team agreed the JREC, an uncertified by California 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 JREC program on July 29, 2020.

## 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 by California 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 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 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

The HJUHSD and the Kings County SELPA submitted all required documents as part of the waiver submission process. The CDE recommends approval of this waiver, with conditions, for the period the student is placed at the JREC, July 29, 2020, through June 30, 2021. This recommendation for approval is contingent upon the following conditions:

* The HJUHSD will consult and coordinate with the Kings County SELPA and the Kings County Office of Education to review the student’s placement through either an on-site visit to the school or a real-time virtual consultation, 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, or real-time virtual consultation, as applicable, the HJUHSD shall provide written reports to the CDE Special Education Division (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 HJUHSD will consult with the JREC 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 HJUHSD 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 HJUHSD 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 HJUHSD meets the conditions of the waiver.

## Summary of Key Issues

The HJUHSD has not previously requested a waiver for the placement of the student in a uncertified by California private school. The recommended period for this waiver submission is July 29, 2020, to June 30, 2021.

Prior to this student’s placement at JREC the student attended certified nonpublic school sites. Due to the student’s significant mental and behavioral health needs, the student had great difficulty accessing the education provided at the previous placements. Specifically, the student demonstrated physically and sexually assaultive behaviors, threatened sexual assault against others, and has a significant history for self-harm and suicide attempts. The nature and seriousness of the student’s behaviors resulted in increased safety concerns. In each of the prior placements, the HJUHSD attempted progressively more restrictive placement options until the student was judicially placed in a juvenile detention center, at which point, the student received instruction and related services through a juvenile court school. The IEP team, including the educational rights holder for the student, agreed that an out-of-state residential placement was appropriate, and represented the LRE following the student’s release from the juvenile detention center.After exhausting all district placement options, the HJUHSD contacted 15 in-state and 19 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 with significant mental and behavioral health needs, and the facilities were unable to ensure the health, safety, and welfare of the student due to the program and facility design. The IEP team, which included the educational rights holder, Kings County Public Guardian (KCPG), juvenile court school special education teacher, Kings County Office of Education (COE)/ SELPA school psychologist, Kings COE assistant superintendent, Kings County Behavioral Health (KCBH), Kings County Probation Department, and faculty from the JREC agreed the JREC, an uncertified by California school and RTC in Canton, Massachusetts, is the most appropriate placement to meet the student’s unique needs. The JREC accepted the student into their program and has been able to meet the student’s needs.

The HJUHSD has monitored the student’s progress and reports the student has been successful at the JREC. The JREC administrator has also reported the student is responding well, both academically and therapeutically, at the JREC. The IEP team believes the student requires the continued placement and treatment interventions to continue to progress. They agree the JREC continues to be the most appropriate placement for the student.The HJUHSD anticipates June 30, 2021, to be the date the student will return to the HJUHSD.

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

**Demographic Information:** The HJUHSD has a student population of 4,016 and is located in a suburban area in Kings County.

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

The California State Board of Education has previously approved placements at the JREC on four separate occasions: May 10, 2007 (3-2-2007-W-27), May 7, 2009 (30-3-2009-W-24), May 12, 2011 (14-3-2011-W-22), and May 11, 2017 (40-12-2016-W-12).

Since the September 2018 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved nine 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 California Department of Education.

## Fiscal Analysis (as appropriate)

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

The yearly cost for placement at the JREC for this student is $287,113.12. 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. The KCBH will be contributing funds to support the student’s mental and behavioral needs at the student’s educational placement.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** HJUHSD Specific Waiver Request 10-6-2020 (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 Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 10-6-2020 | Hanford Joint Union High School District (HJUHSD) and the Kings County Special Education Local Plan Area (SELPA) | **Requested:**July 1, 2020, to June 30, 2021**Recommended:** July 29, 2020, to June 30, 2021(The period the student is placed at the uncertified by California nonpublic school (NPS)) | To waive NPS certification to allow the HJUHSD and the Kings County SELPA to use state and federal special education funds for the placement of a student in an uncertified by California out-of-state residential school | Approval with conditions for the period the student is placed at the uncertified by California NPS | 6/23/2020 | The HJUHSD and the Kings County SELPA may not use state and federal special education funds for the placement of the student at the uncertified by California out-of-state residential school | None |

Created by California Department of Education: September 2020

# Attachment 2: Waiver 10-6-2020 Hanford Joint Union High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1663925

Waiver Number: 10-6-2020

Active Year: 2020

Date In: 6/16/2020 1:02:21 PM

Local Education Agency: Hanford Joint Union High

Address: 823 West Lacey Blvd.

Hanford, CA9323

Start: 7/1/2020

End: 6/30/2021

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366.1(a) **Revision: 56366(d)**

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: 56366.1. **Revision: 56366(d)**

{(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}:

Outcome Rationale: HJUHSD and Kings County SELPA are seeking a waiver for the placement for a high school student who meets the disability category of Emotional Disturbance. The student demonstrates physically and sexually assaultive behaviors, threatens sexual assault against others, and has a significant history for self harm and suicide attempts. The student has a history of eloping from all placements made by social services. When the student was placed at a certified residential NPS earlier in the school year, [the student] eloped from the facility within two weeks, assaulted staff, attempted sexual assault, and was not allowed to return to the placement.

Multiple certified facilities, both in California and out of state have been contacted. All of these placements have either declined the application or do not have the services necessary for the student to receive a FAPE.

Only the facility for which this waiver is requested has accepted the student's application. Upon visiting the facility, it appears that the facility has a clearly articulated, positive behavior intervention program, with multiple levels of support to address the intensive aggressive and self-injurious behaviors of the student. The IEP team feels this placement is the only location at this time where the student will receive educational benefit.

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

Student Population: 141

City Type: Suburban

Local Board Approval Date: 6/23/2020

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Ms.Janice Ede

Position: Director of Special Programs

Email: jede@hjuhsd.org

Telephone: 559-583-5901 x3117

Fax: 559-583-5963

Bargaining Unit Date: 06/11/2020

Name: California School Employees Association #461

Representative: Rosemarie Lopes-Horn

Title: President CSEA #461

Phone: 559-583-5905 x7508

Position: Support

Comments:

Bargaining Unit Date: 06/12/2020

Name: Hanford Secondary Educators Association

Representative: Allen Blanchard

Title: President HSEA

Phone: 559-583-5912 x2504

Position: Support

Comments: