

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationMarch 2023 AgendaItem #W-06

## Subject

Request by the Hanford Elementary School District and Kings County Special Education Local Plan Area 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 middle school student with disabilities at the Renewed Hope Ranch, an uncertified nonpublic school for students with disabilities with a residential treatment center located in Enoch, Utah.

## Waiver Number

7-10-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Hanford Elementary School District (HESD) and Kings County Special Education Local Plan Area (Kings County SELPA) are 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 middle school student with disabilities at the Renewed Hope Ranch (RHR), an uncertified nonpublic school (NPS) for students with disabilities with a residential treatment center (RTC), in Enoch, Utah.

The HESD has not requested a child specific NPS certification waiver, previously, for this student. Prior to the placement of the student at the RHR, the HESD exhausted all district placement options before contacting multiple in-state and out-of-state NPSs with RTCs to find a suitable placement for the student. The HESD contacted 30 certified and non-certified facilities in California and out of state. All of these placements 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 of denial, the facilities would not accept the student, because they could not appropriately address the student’s needs and/or did not have any projected openings. Although the student had previously been placed at a certified in-state NPS, the NPS found that student engaged in behaviors that led to the NPS submitting a 20-day notice for removal. The student’s Individual Education Program (IEP) team considers this uncertified NPS to be more appropriate to provide education and services for this student rather than certified NPS because no other facilities have identified that they have the space or capability of meeting the student's needs, necessitating this waiver application.

## 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
* Denial: No

The HESD 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 RHR, September 12, 2022 through September 12, 2023. This recommendation of approval is contingent upon the following conditions:

* The HESD will consult and coordinate with the Kings County SELPA to 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 HESD and Kings County SELPA 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 HESD and Kings County SELPA will consult with the RHR 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 HESD and Kings County SELPA 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 HESD and Kings County SELPA 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 HESD meets the conditions of the waiver.

## Summary of Key Issues

The student has been placed in over two dozen foster family placements and short-term residential therapeutic programs. The HESD states that the student often eloped or has been asked to leave due to extreme behaviors. These elopements have resulted in harmful or illegal situations and activities. These previous behaviors have made it more difficult for the HESD to find a suitable and safe placement for the student while still ensuring a FAPE.

The student qualifies for Special Education services under the emotional disturbance disability category. The HESD states this student engages harmful behaviors. The Special Education Local Plan Area Director along with a HESD School Psychologist visited RHR to tour both the school and residential facility on September 6, 2022. A meeting was held with many staff members including staff who oversee the residential side, the school, the counseling services, and health services.

The HESD states that the RHR facility has a well-defined positive behavior intervention program to address the needs of the student. The HESD indicates the educational program, and the residential facility are both equipped to keep the student safe and secure. The HESD also stated that the counseling program uses evidence based therapeutic practices, including, Cognitive Behavioral Therapy, Dialectical Behavioral Therapy, Eye Movement Desensitization and Reprocessing Therapy, and Equine Therapy.

The HESD anticipates September 12, 2023, to be the date the student will return to the HESD.

**Demographic Information:** The HESD has a student population of 5,546 and is located in a rural area in Kings County.

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

Since the September 2019 SBE meeting, excluding this waiver submission, the SBE has received and approved 29 approved 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 HESD may utilize state and federal special education funds for the placement of this student at the RHR. If this waiver is denied, the HESD may utilize only local funds to support the student’s placement at RHR. The yearly cost for placement at RHR for this student is $200,750.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** HESD Specific Waiver Request 7-10-2022 (3 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-10-2022 | Hanford Elementary School District (HESD) | **Requested:** September 12, 2022 to September 12, 2023**Recommended:** September 12, 2022 to September 12, 2023 | To waive NPS certification to allow the HESD 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 | October 12, 2022 | The HESD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

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