

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education May 2020 Agenda Item #W-04

## Subject

Request by **Redlands Unified School District** to waive California *Education Code* Section 56366(d), the requirement for nonpublic, nonsectarian schools or agencies to be California-certified, to allow the use of state and federal special education funds for the placement of one high school student with disabilities at an out-of-state school that is not California-certified located in Mountain Home, Idaho.

## Waiver Number

19-2-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

The East Valley Special Education Local Plan Area (SELPA) on behalf of the Redlands Unified School District (RUSD) requests to waive California *Education Code* (*EC*) Section 56366(d), the requirement for California (CA) nonpublic school (NPS) certification, to allow the use of state and federal special education funds for the placement of one high school student with an individualized education program (IEP) at the Sequel Three Springs School-Mountain Home Academy (STSSMHA), an out-of-state nonpublic school and residential treatment center (RTC) located in Mountain Home, Idaho (ID) that is not CA-certified.

The student’s most recent placement in a CA-certified RTC was terminated due to severe behaviors associated with their disabilities. This conduct was consistent with four prior out-of-state placements. The East Valley SELPA on behalf of the RUSD contacted one CA-certified NPS located within the state, and 18 CA-certified out-of-state NPS locations. All of these sites denied admission of the student due to the extreme behaviors. For the past six years, the student has been receiving special education and related services in a therapeutic setting, however, the behaviors have not been effectively managed, and a higher level of care is needed. The student has attended five CA-certified facilities in the past five years which could not support the student’s unique needs. After exhausting all district placement options, the East Valley SELPA on behalf of the RUSD located the STSSMHA, an out-of-state school and RTC located in Mountain Home, ID that is not CA-certified. The STSSMHA provides special education and related services which specializes in treatment interventions that are focused on trauma therapies to address the individualized needs of the student and assist with decision making skills, emotional regulation, cognitive coping, and the promotion of normative stability.

In advance of the placement decision, the East Valley SELPA on behalf of the RUSD physically inspected the STSSMHA, interviewed staff, and inspected documentation provided by the STSSMHA. The IEP team, which includes the educational rights holder of the student, agreed the STSSMHA is able to meet the student’s comprehensive, unique needs in order to provide the student with a Free Appropriate Public Education (FAPE). The STSSMHA accepted the student into their program, and the student was placed in the program on February 19, 2020.

The RUSD requests to waive California *EC* Section 56366(d), the requirement for CA nonpublic school certification, to allow the use of state and federal special education funds for the placement of this student at the STSSMHA.

## Recommendation

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

As the RUSD and the East SELPA have 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 requested, February 19, 2020, through December 18, 2020. This recommendation for approval is contingent upon the following conditions:

* The RUSD will consult and coordinate with the East Valley SELPA to review the student’s placement through on-site visits to the STSSMHA at least two times during the period of this waiver.
  + After each on-site visit, the East Valley SELPA on behalf of the RUSD shall provide a written report to the CDE Special Education Division (SED) documenting the findings of the on-site visit. The written reports shall include a summary of the student’s progress on IEP goals, academic achievement, management and improvement addressing behavioral challenges, other information which supports the appropriateness of the placement, and details of the on-site visit.
* The East Valley SELPA on behalf of the RUSD will consult with the STSSMHA liaison, each month, to monitor the provision of special education and related services as required by the student’s operative IEP and discuss the student’s progress through email, telephone calls, and/or education program data. Program data includes the student’s progress on their IEP goals, school attendance, work completion rate, grades, participation in the therapeutic program, behavior emergency reports, incident reports and accident reports.
* The East Valley SELPA on behalf of the RUSD will contact the student’s parents to discuss progress and to address any concerns identified during the monthly monitoring and consultations with the STSSMHA liaison.
* The RUSD will schedule timely annual and/or triennial IEP meetings, including any amendments to develop, review, or revise the IEP to ensure the student’s progress towards the prescribed course of study to meet the proficiency standards for graduation. The RUSD shall provide the student with a summary of their academic achievement and functional performance, which shall include recommendations on the manner by which the student is to be assisted with meeting their postsecondary educational goals once eligibility for special education has terminated due to graduation.

If the waiver is approved, the SED will monitor to ensure the RUSD and East Valley SELPA 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 CA public school and/or CA-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 NPS which is not certified 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.

## Summary of Key Issues

Prior to the student’s placement at the STSSMHA, the student received special education and related services at Phoenix Academy at Southern Peaks Regional Treatment Center in Colorado, a CA-certified NPS. Although this placement provides treatment services to youth struggling with social and emotional issues through a behavioral program with educational services that are facilitated through trauma informed, gender responsive and culturally based treatment approaches, the student’s needs could not be addressed. The behaviors exhibited by this particular student requires school staff to provide intensive oversight. For this reason, the IEP team determined the student required an educational program that offered services that could support the student’s unique needs and a RTC that is responsive to the student’s behavioral needs. After exhausting all CA-certified and uncertified NPS programs in the state, the East Valley SELPA located an out-of-state uncertified facility which offers an educational program and RTC placement consistent with the student’s needs. The RUSD anticipates that the student will be eligible to graduate by the end of September 2020, and no later than December 18, 2020, at which time the student will have reached the age of majority and completed all graduation requirements.

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

**Demographic Information:** The RUSD has a student population of 21,240 and is located in an urban area in San Bernardino 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 11 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, East Valley SELPA on behalf of the RUSD may utilize state and federal special education funds for the placement of this student at the STSSMHA. If this waiver is denied, East Valley SELPA on behalf of the RUSD may utilize only local funds to support the student’s placement at the STSSMHA.

The estimated cost for placement at the STSSMHA for the 11-month period specified in this waiver is $110,000. The yearly cost for placement at STSSMHA for this student is $120,000.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Redlands Unified School District Specific Waiver Request   
  19-2-2020 (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 Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 19-2-2020 | Redlands Unified School District (RUSD) | **Requested:**  February 19, 2020, to December 18, 2020  **Recommended:** February 19, 2020, to December 18, 2020 | To waive California nonpublic school (NPS) certification to allow the RUSD to use state and federal special education funds for the placement of the student in the uncertified, out-of-state NPS | Approval with conditions for the period requested | Fiscal authorization for the student’s placement at the uncertified, nonpublic school was provided by the RUSD Superintendent of Schools on 1/8/2020. | The RUSD 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: February 2020

# Attachment 2: Waiver 19-2-2020 Redlands Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3667843

Waiver Number: 19-2-2020

Active Year: 2020

Date In: 2/21/2020 1:30:49 PM

Local Education Agency: Redlands Unified

Address: 20 West Lugonia Ave.

Redlands, CA 92374

Start: 2/19/2020

End: 12/18/2020

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

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: [California *Education Code* (*EC*) Section 56366(d), the requirement for state certification, to allow the use of state and federal special education funds for the placement] of this student at Mountain Home Academy.

Outcome Rationale: Student was asked to leave 5 CDE certified facilities in the past 5 years. Student had been denied placement at 18 CDE certified facilities out of state and in CA due to severe aggressive behaviors, sexually acting out with peers, touching younger peers and staff, destroying property, and inappropriate sexual behavior (drawing pictures, verbal comments to staff). This facility specializes in sexual misconduct has accepted the student and can meet the student’s educational and therapeutic needs.

Student Population: 21012

City Type: Urban

Local Board Approval Date: 1/8/2020

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Patty Metheny

Position: SELPA Director

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