

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education March 2021 Agenda Item #W-11

## Subject

Request by the **Paso Robles Joint Unified School District** to waive California *Education Code* 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 Canton, Massachusetts.

## Waiver Number

3-12-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Paso Robles Joint Unified School District (PRJUSD) requests to waive California *Education Code* (*EC)* 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of one student with disabilities at the Judge Rotenberg Educational Center (JREC), an uncertified school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts. The JREC is currently not certified by the California Department of Education (CDE) as a certified nonpublic school (NPS). The JREC is a licensed and certified private school and RTC operated in the state of Massachusetts.

Prior to the placement of the student at the JREC, the PRJUSD 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. After multiple attempts to find a California certified NPS/RTC that would accept this student, both inside and out of California, the student’s individualized education program (IEP) team found the JREC to be the appropriate placement to meet the student’s unique behavioral and mental health needs. No other NPS/RTC would accept the student after considering the referral information and the highly intense needs of the student. As such, the other facilities could not ensure the health, safety, and welfare of the student, and the provision of a free appropriate public education (FAPE).

Further, this case was litigated through the Office of Administrative Hearings (case #2019120387). The judge ordered the PRJUSD to find the student (who had eloped from a California group home) and place the student in an appropriate RTC. The IEP team agreed the JREC, an uncertified NPS having a RTC, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE.

## 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 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 PRJUSD 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 10, 2020, through July 10, 2021. This recommendation for approval is contingent upon the following conditions:

* The PRJUSD will 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 PRJUSD shall provide written reports to the CDE, 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 on-site review.
* The PRJUSD 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 PRJUSD 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 PRJUSD 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 PRJUSD meets the conditions of the waiver.

## Summary of Key Issues

The PRJUSD has not previously requested a waiver for the placement of the student in an uncertified NPS. The recommended period for this waiver submission is from   
July 10, 2020, through July 10, 2021.

Prior to placement at the JREC, the student was placed in the California certified NPS Cinnamon Hills at the age of 17 in Utah. Cinnamon Hills ended the student’s placement before the student turned 18. The district moved the student to the Logan River Academy (LRA) in Utah, which obtained a waiver of Utah state rules in order to continue educating the student past age 18. After over a year at the LRA, the student had an inappropriate incident with another resident who was a minor at the time. The LRA gave the district a 20-day notice. With an extensive search, the district, in conjunction with the regional center, found a placement in Fresno that would accept the student. However, the regional center withdrew its support for the placement, and thus the Fresno placement was longer be available. The district brought the student home and placed them in a district adult transition program for students ages 18 through 22. The student ran away from a group home and the district was in litigation over the situation. As a result of an Office of Administrative Hearings (OAH) due process hearing, both parties agreed to the placement at the JREC. The JREC was able to work with the local courts to resolve the conservatorship and guardianship issues. The JREC is also able to work with adults beyond the age of 22, the age at which California students with disabilities “age out” of eligibility for special education, which is important here because OAH has ordered the district to provide “compensatory education” to the student beyond age 22. They have a secure facility and are able to work with clients having the high level of behavioral needs that the student presented at the time of placement.

If the SBE approves the waiver the PRJUSD 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 PRJUSD has a student population of 6,869 and is located in a small city in Ventura County.

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

Since the September 2018 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 10 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 PRJUSD may utilize state and federal special education funds for the placement of this student at the JREC. If this waiver is denied, the PRJUSD 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 $408,801.89.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** PRJUSD Specific Waiver Request 3-12-2020 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 3-12-2020 | Paso Robles Joint Unified School District (PRJUSD) | **Requested:** July 10, 2020, to July 10, 2021  **Recommended:** July 10, 2020, to July 10, 2021 | To waive NPS certification to allow the PRJUSD 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 | 10/13/2020 | The PRJUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

Created by California Department of Education: January 2021

# Attachment 2: Paso Robles Joint Unified School District Specific Waiver Request 3-12-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4075457

Waiver Number: 3-12-2020

Active Year: 2020

Date In: 12/4/2020 12:10:21 PM

Local Education Agency: Paso Robles Joint Unified

Address: 800 Niblick Rd.

Paso Robles, CA 93446

Start: 7/10/2020

End: 7/10/2021

Waiver Renewal: Y

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: Paso Robles Joint Unified School District requests approval of Specific Waiver by CDE to waive California *Education Code* Section 56366.1(a), the requirement for state certification to allow an uncertified out-of-state nonpublic school, Judge Rotenberg Center, located in Massachusetts, to provide services to a California student with disabilities.

Outcome Rationale: After multiple attempts to find an NPS/RTC that would accept this student both inside and out of California, the team found JRC to be appropriate to meet the students unique behavioral and mental health needs. No other NPS/RTC would accept the student after considering the referral information and the highly intense needs of the student. Further, this case was litigated through a due process and the judge ordered NPS placement after the student was found. JRC was the only NPS/RTC that was willing to work with our unique timeline which required us to find the student in Los Angeles, get her to a hospital and transport her to JRC before she would elope yet again. JRC is currently working the student and doing a fantastic job.

Student Population: 150

City Type: Small

Local Board Approval Date: 10/13/2020

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Terry Hollen

Position: Director of Special Education

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