

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education July 2022 Agenda Item #W-12

## Subject

Request by **Paso Robles Joint Union High School District (PRJUHSD)** and the **San Luis Obispo County Special Education Local Plan Area (SELPA)** 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 school for students with disabilities located in Canton, Massachusetts**.**

## Waiver Number

2-1-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The PRJUHSD and the San Luis Obispo County 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 school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts.

The PRJUHSD has requested and been granted a prior nonpublic school (NPS) waiver for this student after placing the student diagnosed with Intellectual Disability at JREC, an uncertified school in Canton, Massachusetts.

Prior to this student’s placement at JREC, the student has had a lengthy history of unique placements due to student’s behavioral profile. This has included two Non-Public School (NPS) with RTC placements in Utah. These placements were not able to work with students past 18 years of age, which is one of the reasons the IEP team agreed to placement at JREC to serve as Least Restrictive Environment (LRE). Further, a due process hearing was filed in 2020 wherein the California Office of Administrative Hearings (OAH) ordered secure placement. JREC accepted the student and this placement has been successful.

The PRJUHSD 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 Individualized Education Program (IEP) team believes the student requires the continuity of their current placement and treatment team to continue to progress. They agree that JREC continues to be the most appropriate placement for the student.The PRJUHSD anticipates October 25, 2022, to be the date the student will age out of the PRJUHSD.

The individualized education program (IEP) team agreed the JREC, an uncertified school, is able to meet the student’s comprehensive and unique needs which will provide the student with a free appropriate public education (FAPE). The student was placed in the JREC program on July 10, 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). 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 PRJUHSD and the San Luis Obispo 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 of July 11, 2021, through October 25, 2022. This recommendation for approval is contingent upon the following conditions:

* The PRJUHSD will consult and coordinate with the San Luis Obispo County SELPA and the San Luis Obispo 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.
  + After each on-site visit, or real-time virtual consultation, as applicable, the PRJUHSD 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 on-site review.
* The PRJUHSD 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 PRJUHSD 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 PRJUHSD 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 PRJUHSD meets the conditions of the waiver.

## Summary of Key Issues

The Paso Robles Joint Union High School District (PRJUHSD) and the San Luis Obispo 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 school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts.

The PRUHSD and the San Luis Obispo County (SELPA) have requested a child specific NPS certification waiver, previously, for this student (Waiver 3-12-2020 approved by the SBE for the period of July 10, 2020 to July 10, 2021). Prior to the placement of the student at the JREC, the PRJUHSD attempted all district placement options before contacting multiple in-state and out-of-state NPSs to have a placement for the student. As a result of a due process hearing, JREC was the only RTC/NPS willing to accept the student. The student, whose special education eligibility category is identified as intellectual disability, was placed at JREC as a result of the severity of student’s needs and the due process hearing. In addition, this placement was necessary due to conservatorship issues in other states and the severity of the student’s disability as well as their significant behavioral needs. The student has had a lengthy history of unique placements due to the behavioral profile. This has included two RTC/NPS placements in Utah. These placements were not able to work with students past 18 years of age, which is one of the reasons for the change to JREC. Further, a due process hearing was filed in 2020 wherein the OAH ordered secure placement. JREC accepted the student and this placement has been successful.

The IEP team agreed the JREC, an uncertified 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 in the summer of 2020.

If the SBE approves the waiver the PRJUHSD 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 PRJUHSD has a student population of 6,539 and is located in a suburban area in San Luis Obispo 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 26 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 PRJUHSD may utilize state and federal special education funds for the placement of this student at the JREC. If this waiver is denied, the PRJUHSD 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 $415,467.04

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** PRJUHSD Specific Waiver Request 2-1-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-1-2022 | Paso Robles Joint Union High School District (PRJUHSD) and the San Luis Obispo County Special Education Local Plan Area San Luis Obispo County (SELPA) | **Requested:** July 11, 2021, to October 25, 2022  **Recommended:** July 11, 2021, to October 25, 2022 | To waive NPS certification to allow the PRJUHSD and the San Luis Obispo County SELPA to use state and federal special education funds for the placement of a student in an uncertified school | Approval with conditions for the period the student is placed at the uncertified school | 10/12/2021 | The PRJUHSD and the San Luis Obispo County SELPA may not use state and federal special education funds for the placement of the student at the uncertified school | 3-12-2020 |

Created by California Department of Education: July 2022

# Attachment 2: Waiver 2-1-2022 Paso Robles Joint Union High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4075457

Waiver Number: 2-1-2022

Active Year: 2022

Date In: 1/13/2022 2:24:30 PM

Local Education Agency: Paso Robles Joint Unified

Address: 800 Niblick Rd.

Paso Robles, CA 93446

Start: 7/11/2021

End: 10/25/2022

Waiver Renewal: N

Previous Waiver Number: 3-12-202

Previous SBE Approval Date: 3/16/2021

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: The district requests to waive California *Education Code* Section 56366.1(a), the requirement for state certification to allow the use of California's federal special education funds for the continued placement of a student at Judge Rotenberg Center in Canton Massachusetts.

Outcome Rationale: The student has been placed at JREC since the summer of 2020. While the student has made growth in many areas including vocational training, behavioral/social emotional, and life skills, the student continues to require a high level of care due to her intellectual disability. JREC has provided what the IEP team believes is needed for this student to make progress on her IEP goals. Moving her from this placement at this time would very much be detrimental to the progress student has made. A specific waiver was filed in 2020 because after a multi month search of NPS/RTC placements across the US, JREC was the only facility who accepted her due to her high behavioral needs. The district requests renewal of this waiver so as to be able to access state and federal funds to continue her placement until student ages out in October of 2022.

Student Population: 6539 per Dataquest

City Type: Urban

Local Board Approval Date: 10/12/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Terry Hollen

Position: Director of Special Education

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