

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education September 2022 Agenda Item #W-07

## Subject

Request by **Rialto Unified School District** (RUSD) 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 federal and state special education funds for the placement of one student with disabilities at the Sandy Pines Residential Treatment Center (Sandy Pines) in Jupiter, Florida an uncertified school for students with disabilities with a residential treatment center (RTC).

## Waiver Number

7-5-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The RUSD requests to waive *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 student with disabilities at Sandy Pines in Jupiter, Florida, an uncertified school for students with disabilities with an RTC.

The RUSD has not previously requested a child-specific nonpublic school (NPS) certification waiver for this student.

The student was discharged from Devereux Advanced Behavioral Health, (Devereux) Florida in November 2021 because the student was doing well. The student had been enrolled at Deveraux, Florida two times and Devereux has indicated they will not accept the student back for a third time. Prior to placing the student at Sandy Pines, the RUSD exhausted all district placement options before contacting 30 in-state and out-of-state California certified NPSs having RTCs to find a suitable placement for the student. RUSD indicates Sandy Pines is the only NPS/RTC that would accept the student and would be able to meet the student’s educational, medical, and mental health needs before the student might elope again. As such, RUSD believes Sandy Pines was the only facility that could ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (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 Individualized Education Program (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 placements.

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 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.

Not all private school programs and facilities meet all of the California NPS certification standards for providing special education and 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 a private school site that is not currently 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 submits all required documentation and the CDE performs a detailed analysis of the documentation. If the waiver request meets all of the waiver requirements, the CDE’s Special Education Division (SED) will recommend approval of the waiver, along with any appropriate conditions specific to the waiver.

## Recommendation

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

The RUSD 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 Sandy Pines, June 23, 2022 through July 29, 2023. This recommendation of approval is contingent upon the following conditions:

* The RUSD will 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 RUSD 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 RUSD will consult with the Sandy Pines 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 RUSD 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 RUSD 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 RUSD meets the conditions of the waiver.

## Summary of Key Issues

While the student returned to the District from an NPS/RTC placement in November 2021 because the student no longer needed such a restrictive placement,in the last six months, the student has been hospitalized numerous times because they were a danger to themselves and has rarely attended school. The student demonstrated repeated self-injurious behaviors, aggressive behaviors towards school staff and their parent, work refusal and suicidal ideation. Prior to placing the student at Sandy Pines, the RUSD exhausted all district placement options and contacted 30 in-state and out-of-state California certified NPSs. None of the placements considered or contacted were able to provide the student with an appropriate placement.

If the SBE approves the waiver, the RUSD will be able to continue to use state and federal special education funds for the placement of this student at the Sandy Pines for the period requested. The RUSD anticipates July 29, 2023, to be the date the student will return to the RUSD.

**Demographic Information:** The RUSD has a student population of 25,186 and is a small city located in San Bernardino County.

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

Since the September 2019 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 23 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 RUSD may utilize state and federal special education funds for the placement of this student at Sandy Pines. If this waiver is denied, the RUSD may utilize only local funds to support the student’s placement at Sandy Pines. The yearly cost for placement at Sandy Pines for this student is $281,725.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** RUSD Specific Waiver Request 7-5-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-5-2022 | Rialto Unified School District (RUSD) | **Requested:** June 23, 2022, to July 29, 2023  **Recommended:** June 23, 2022, to July 29, 2023 | To waive NPS certification to allow the RUSD 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 | 5/4/2022 | The RUSD 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: July 2022