

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education September 2024 Agenda Item #W-10

## Subject

Request by the **Lompoc Unified School District** 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 high school student with disabilities at the Behavioral Health Allies Residential Treatment Center (Behavioral Health Allies), an uncertified nonpublic school for students with disabilities with a residential treatment center, in Kansas City, Missouri.

## Waiver Number

17-3-2024

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Lompoc Unified School District (LUSD) is seeking a waiver of *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 Behavioral Health Allies, an uncertified nonpublic school for students with disabilities with a residential treatment center (RTC), in Kansas City, Missouri.

The LUSD has not requested a child specific nonpublic school (NPS) certification waiver previously for this student. Prior to placing the student at the Behavioral Health Allies, the LUSD exhausted all district placement options before contacting 9 state certified and noncertified NPSs and 29 out-of-state certified and noncertified NPSs with RTCs to provide a suitable placement for the student. All 38 facilities either declined the application or did not have the services necessary for the student to receive a free and appropriate public education (FAPE). In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s intensive, compassionate care for behavioral and educational needs due to a developmental disability. Therefore, the individualized education program (IEP) team found that Behavioral Health Allies was the best placement to meet the student’s unique needs.

## 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, 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 is 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 the waiver requirements, the CDE‘s 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 LUSD 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 Behavioral Health Allies, from May 2024, through May 2025. This recommendation of approval is contingent upon the following conditions:

* The LUSD 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 on-site visit, the LUSD shall provide written reports to 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 LUSD will consult with the Behavioral Health Allies 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 of IEP goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.
* The LUSD 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 LUSD will schedule IEP meetings, and may participate virtually, 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 to determine any necessary changes in the student’s academic and/or therapeutic program.

If the waiver is approved, the CDE’s SED will monitor the conditions established by the State Board of Education (SBE) to ensure the LUSD meets the conditions of the waiver.

## Summary of Key Issues

The LEA has made this request to address the unique needs of a student who requires intensive support in various areas including Applied Behavioral Analysis (ABA), functional academics, behavioral, speech, and independent living skills. The LEA has applied to 38 NPSs, both certified and non-certified, within and outside California, and all applications were denied. Behavior Health Allies is the first institution to accept the student.

According to the LUSD, a settlement agreement from February 2023 requires that the district offer to place the student in an NPS with an RTC to meet the student's individual needs and ensure they receive FAPE. According to the district, the LUSD IEP team indicates the placement at Behavioral Health Allies, an uncertified NPS with an RTC, is the best location for the student to receive educational benefit and FAPE. Without an appropriate placement, the IEP team believes that the student's history of long-standing problematic behavior will continue and increase. The LUSD anticipates August 2024 to be the date the student will return to the LUSD.

**Demographic Information:** The LUSD has a student population of 9,413 and is located in an urban area in Santa Barbara 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 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

If this waiver is approved, the LUSD may utilize state and federal special education funds for the placement of this student at the Behavioral Health Allies. If this waiver is denied, the LUSD may utilize only local funds to support the student’s placement at Behavioral Health Allies. The yearly cost for placement at Behavioral Health Allies for this student is $660,231.00.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Lompoc Unified School District Specific Waiver Request 17-3-2024 (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 Recommendation | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 17-3-2024 | Lompoc Unified School Distirct (LUSD) | **Requested:** May 6, 2024, to May 6, 2025  **Recommended:** May 6, 2024, to May 6, 2025 | To waive *EC* NPS certification requirements to allow the LUSD 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 | 2/13/2024 | The LUSD 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

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# Attachment 2: Lompoc Unified School District Specific Waiver Request 17-3-2024

California Department of Education

WAIVER SUBMISSION – Specific

CD Code: 4269229

Waiver Number: 17-3-2024

Active Year: 2024

Date In: 3/24/2024 1:02:33 PM

Local Education Agency: Lompoc Unified

Address: 1301 North A St.

Lompoc, CA 93436

Start: 5/6/2024

End: 5/6/2025

Waiver Renewal: No

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: EC Section 56366(d)[ A master contract for special education and related services provided by a nonpublic, nonsectarian school or agency may not be authorized under this part, unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the nonpublic, nonsectarian school or agency receiving approval to educate pupils under this part for a period no longer than 18 months from the date of the initial approval.

Outcome Rationale: This request has come to support the unique needs of the LEA's student. The LEA has applied and been denied to 38 NPS's, both certified and noncertified as well as in the state of CA and out of state. Behavior Health (Holdings) Allies is the first to accept the student.

There is a settlement agreement from Feb. of 2023 placing the student in an NPS. The student requires intensive supports in all areas of ABA, functional academics, behavioral, speech and independent living skills. This placement will meet the individual needs of the student and provide FAPE while providing the 24/7 care that is needed at this time.

Student Population: 8907

City Type: Urban

Local Board Approval Date: 2/13/2024

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jamie Johnson

Position: Director of Special Education

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