

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationJuly 2021 AgendaItem #W-12

## Subject

Request by the **Curtis Creek Elementary School District and the Tuolumne County Special Education Local Plan Area** 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

2-8-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

Having submitted a waiver request to the State Board of Education (SBE), the Curtis Creek Elementary School District (CCESD) and Tuolumne County Special Education Local Plan Area (SELPA) have requested to waive California *Education Code* (*EC)* Section 56366(d)*.* The CCESD is seeking a waiver to place a student at the Judge Rotenberg Education Center (JREC), an uncertified school for students with disabilities that includes a residential treatment center (RTC), in Canton, Massachusetts for the period of February 1, 2021, to February 1, 2022. 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.

The student’s special education eligibility category is identified as emotional disturbance, with a specific learning disability included as a secondary disability. The CCESD and the Tuolumne County SELPA have not previously requested a child specific NPS certification waiver for this student.

The student went to Office of Administrative Hearing against the CCESD and the Tuolumne County Superintendent of Schools (TCSOS), and prevailed. The administrative law judge agreed with the student that the CCESD and the TCSOS needed to place the student at Madison Oaks Academy, a certified level 14 NPS and RTC in Jackson, Tennessee. On appeal, the United States District Court confirmed that the CCESD and the TCSOS needed to place the student at Madison Oaks Academy and RTC. The student was placed at Madison Oaks Academy and RTC following the judicial order. In this placement, there was some improvement in behavior compared to the student’s entry at the facility and prior. However, there still were issues with behavior support that the NPS was not able to address.

The individualized education program (IEP) team met and determined that another placement was needed for the student to receive a free and appropriate education (FAPE). The CCESD and the Tuolumne County SELPA went back to the court with the information and the court ruled that the student could be at any NPS/RTC which could provide FAPE for the student. The CCESD and the Tuolumne County SELPA attempted to place the student at 12 California certified NPSs, but all placements were denied. The JREC accepted the student, and the IEP team determined the JREC would provide a FAPE for the student. This waiver seeks to place the student in the JREC program from February 1, 2021, to February 1, 2022.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the least restrictive environment (LRE). The LEA 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 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 with conditions that are specific to the waiver.

**Authority for Waiver**

*California Education Code (EC)* Section 56101

## Recommendation

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

The CCESD and Tuolumne County SELPA submitted supporting documents as part of the waiver submission process. The CDE recommends approval of the waiver with conditions, for the period requested, February 1, 2021, to February 1, 2022.

If the SBE agrees with the CDE’s recommendation to approve the waiver with conditions the CCESD and Tuolumne County SELPA will be authorized to use state and federal special education funds for the placement of the student at the JREC for the period requested.

The CDE recommends that the approval include the following conditions:

* The CCESD and Tuolumne County SELPA 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 on-site visit, or real-time virtual consultation, as applicable, the CCESD and Tuolumne County SELPA 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 CCESD and Tuolumne County SELPA 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 CCESD and Tuolumne County SELPA 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 CCESD and Tuolumne County SELPA 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 SBE to ensure the CCESD meets the conditions of the waiver.

## Summary of Key Issues

The CCESD has not previously requested a waiver for the placement of the student in an uncertified NPS. The CCESD changed the dates of the waiver “Period of Request” after they submitted the waiver. As such, the requested period for this waiver submission is February 1, 2021, to February 1, 2022.

The student’s special education eligibility category is identified as emotional disturbance, with a specific learning disability included as a secondary disability. The CCESD and the Tuolumne County SELPA have not previously requested a child specific NPS certification waiver for this student. The student was previously judicially placed at Madison Oaks Academy, a level 14 NPS and RTC located in Jackson, Tennessee. In that placement, the student received 24 hour residential care. The CCESD initially reported the student was making some behavioral and academic progress at the Madison Oaks Academy compared to his entry at the facility and prior. However, there still were issues with behavior support that the NPS was not able to address.

The CCESD’s IEP team met and determined that another placement was needed for the student to receive a FAPE. The CCESD and the Tuolumne County SELPA went back to the court with the information and the court ruled that the student could be at any NPS/RTC which could provide FAPE for the student. The CCESD and the Tuolumne County SELPA attempted to place the student at 12 California certified NPS, but all placements were denied. The JREC accepted the student and the IEP team determined that this placement would provide a FAPE for the student. Based on this information, the CDE recommends approval of the waiver request with the conditions outlined above for the requested period of February 1, 2021, to February 1, 2022.

**Demographic Information:** The CCESD has a student population of 495 and is located in a suburban area in **Tuolumne** County.

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

The California State Board of Education has previously approved placements at the JREC on five separate occasions: May 10, 2007 (3-2-2007-W-27), May 7, 2009 (30-3-2009-W-24), May 12, 2011 (14-3-2011-W-22), May 11, 2017 (40-12-2016-W-12), and November 5, 2020 (10-6-2020-W-08).

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 CCESD may utilize state and federal special education funds for the placement of this student at the JREC. If this waiver is denied, the CCESD 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 may be up to $405,882, dependent upon the actual services provided. This amount includes services provided in accordance with the individual services agreement and the IEP as identified by the CCESD:

* Out-of-state year-round placement at a residential treatment center/school designed for individuals with severe emotional and behavioral disorders
* 1:1 aide for support with transition to the JREC and monitoring of behaviors
* Specialized Academic Instruction, 360 days (included in overall cost)
* Individual Counseling, 30 min weekly (included in overall cost)
* Group Counseling, 180 min weekly (included in overall cost)
* Parent Counseling, 90 min weekly (included in overall cost)
* Intensive Individual Instruction for the academic day (currently specified as 375 minutes)

The CCESD will be responsible for funds to support the student’s mental and behavioral needs at the student’s educational placement.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** CCESD Specific Waiver Request 2-8-2020 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-8-2020 | Curtis Creek Elementary School District (CCESD) and Tuolumne County Special Education Local Plan Area (SELPA) | **Requested**August 14, 2020 to August 14, 2021**Revised**February 1, 2021 to February 1, 2022**Note:** The CCESD changed the dates of the period of request after they submitted the waiver request.**Recommended**February 1, 2021 to February 1, 2022 | To waive NPS certification to allow the CCESD and the Tuolumne County SELPA to use state and federal special education funds for the placement of a student in an uncertified NPS | Approval with conditions | 8-12-2020 | The CCESD may not use state and federal special education funds for the student’s placement in an uncertified NPS | None |

Created by California Department of Education: May 2021

# Attachment 2: Curtis Creek Elementary School District Specific Waiver Request 2-8-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 5572355

Waiver Number: 2-8-2020

Active Year: 2020

Date In: 8/13/2020 4:37:45 PM

Local Education Agency: Curtis Creek Elementary

Address: 18755 Standard Rd.

Sonora, CA 95370

Start: 8/14/2020

End: 8/14/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date: 8/14/2020

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366(d)

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: *EC* 56366 (d)

Outcome Rationale: The parents of a special education student (hereinafter “Student”) who reside within our SELPA boundaries recently requested that our Local Education Agency (“LEA”) look into placement of their twelve year old son at Judge Rotenberg Center (“JRC”), in Massachusetts. We would like to seek an NPS waiver from CDE for placement at this facility. Student is currently placed at another residential facility, and this facility is not located in Massachusetts. He has been attending the same out-of state residential facility since approximately May 2019.

Student was placed at his current residential facility following a judicial order. In his current placement, behaviors have improved from reporting compared to his entry at the facility and prior. This includes a reduction in elopement, and aggression, both towards staff and peers.

His current placement is a locked, level 14 facility where residential and school components are colocated. JRC has separate residences which mimic the family home environment, which may be conducive to our ultimate goal of returning the student to the family home. JRC offers a highly individualized special education program, including supervision by behaviorists, which his current program lacks. JRC emphasizes reliable data collection, and to that end, all staff work in multiple settings (e.g. school setting, home setting) so they are able to standardize behavioral interventions and rating across environments. JRC has a consulting psychiatrist that co-treats with the behavior team, which is similar to his current residential setting, and the collaboration with the psychiatrist and school team has provided benefit to the student. JRC works to involve the student’s home district and family, which is another approach we believe would benefit eventual family reunification.

While we believe progress has been made at his current facility, Parents have requested a change in placement, and both Parents and the District have been unsuccessful in finding a suitable alternative and certified placement. With the understanding that JRC currently serves other California students, we believe this placement may also be beneficial for the student at issue here.

Parents have requested a speedy placement change, which we are prepared to consider. We hope CDE can quickly process this request. Please contact me if there is any further information I can provide.

Student Population: 1

City Type: Suburban

Local Board Approval Date: 8/12/2020

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Kylee Luchetti

Position: Director II, Special Education (SELPA)

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