

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-10

## Subject

Request by the **Carlsbad Unified School District and the North Coastal Consortium for Special Education, Special Education Local Plan Area** 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 out-of-state school for students with disabilities located in Forrest City, Arkansas.

## Waiver Number

13-12-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Carlsbad Unified School District (CUSD) and the North Coastal Consortium for Special Education, Special Education Local Plan Area (SELPA) request 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 high school student with disabilities at the Perimeter Behavioral of Forrest City (PBFC), an uncertified school for students with disabilities with a residential treatment center (RTC), in Forrest City, Arkansas. The PBFC is currently not certified by the California Department of Education (CDE) as a certified nonpublic school (NPS). The PBFC is an Arkansas Joint Commission accredited RTC.

The CUSD and the SELPA have not requested a child specific NPS certification waiver, previously, for this student. Prior to the placement of the student at the PBFC, the CUSD 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. The student, whose special education eligibility category is identified as emotional disturbance, was denied admission to 38 certified NPSs with an RTC component due to the program and facility design. In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s level of aggression, destruction of property, self-harm, and sexually reactive behaviors. Additionally, the facility design of each site lacked the required security which is needed to prevent the student from leaving the facility. As such, the facilities could not ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE).

The individualized education program (IEP) team agreed the PBFC, 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 will be placed in the PBFC program once the student is released from a juvenile detention center.

## 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 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.

## Recommendation

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

The CUSD 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 PBFC through June 26, 2021. This recommendation for approval is contingent upon the following conditions:

* The CUSD will consult and coordinate with the SELPA 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 CUSD 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 or real-time virtual consultation.
* The CUSD will consult with the PBFC 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 CUSD 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 CUSD 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 CUSD meets the conditions of the waiver.

## Summary of Key Issues

The CUSD 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 the student’s placement through June 26, 2021.

Prior to this student’s placement at PBFC the student attended certified nonpublic school sites. Due to the student’s significant mental and behavioral health needs, the student had great difficulty accessing the education provided at the previous placements. Specifically, the student demonstrated physically and sexually assaultive behaviors, threatened sexual assault against others, and has a history for self-harm. The nature and seriousness of the student’s behaviors resulted in increased safety concerns. In each of the prior placements, the CUSD attempted progressively more restrictive placement options until the student was judicially placed in a juvenile detention center, at which point, the student received instruction and related services through a juvenile court school. The IEP team, agreed that a residential placement at an uncertified private school was appropriate, and represented the LRE following the student’s release from the juvenile detention center.After exhausting all district placement options, the CUSD contacted 12 in-state and 26 out-of-state certified NPSs with RTCs to provide a FAPE to the student. These certified NPSs denied admission due to concerns about their ability to accommodate a student with significant mental and behavioral health needs, and the facilities were unable to ensure the health, safety, and welfare of the student due to the program and facility design. The IEP team agreed PBFC, an uncertified school, is the most appropriate placement to meet the student’s unique needs. The PBFC accepted the student into their program on October 21, 2020, with a tentative start date of December 18, 2020, pending the student’s release from a juvenile detention center. CUSD anticipates June 26, 2021, to be the date the student will return to the CUSD.

If the SBE approves the waiver the CUSD will be able to use state and federal special education funds for the placement of this student at the PBFC for the period requested.

**Demographic Information:** The CUSD has a student population of 11,481 and is located in an urban area in San Diego 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, CUSD may utilize state and federal special education funds for the placement of this student at PBFC. If this waiver is denied, CUSD may utilize only local funds to support the student’s placement at PBFC. The yearly cost for placement at PBFC for this student is $105,950.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** CUSD Specific Waiver Request 13-12-2020 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 13-12-2020 | Carlsbad Unified School District (CUSD) and the North Coastal Consortium for Special Education, Special Education Local Plan Area (SELPA) | **Requested:** December 18, 2020, to June 26, 2021  **Recommended:** The date the student is placed at the uncertified nonpublic school (NPS), to June 26, 2021 | To waive NPS certification to allow the CUSD and North Coastal Consortium for Special Education SELPA 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 | 12/16/2020 | The CUSD and North Coastal Consortium for Special Education SELPA 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: Carlsbad Unified School District Specific Waiver Request 13-12-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3773551

Waiver Number: 13-12-2020

Active Year: 2020

Date In: 12/17/2020 12:40:49 PM

Local Education Agency: Carlsbad Unified

Address: 6225 El Camino Real

Carlsbad, CA 92009

Start: 12/18/2020

End: 6/26/2021

Waiver Renewal: N

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(d)

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: Request by Carlsbad Unified School District 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 on high school student with disabilities at an uncertified out-of-state nonpublic school for students with disabilities located in Forrest City, Arkansas.

Outcome Rationale: The Carlsbad Unified School District and the North Costal Consortium for Special Education have not requested a child specific NPS certification waiver previously for this student. Prior to acceptance and placement of the student at Perimeter Behavior of Forrest City the District had placed the student in both in and out of state NPS having RTC placements. Due to the student needs his most recent in state NPS with RTC placement has been determined to not have a sufficient level of security to continue to meet his needs due to his significant flight risk level. The student, whose special education eligibility category is identified as emotional disturbance, was denied admission to 38 NPS with RTC component due to the level of his aggressive and sexually reactive behaviors.

Student Population: 66

City Type: Urban

Local Board Approval Date: 12/16/2020

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Kathryn Nichols

Position: Program Specialist

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