

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education November 2021 Agenda Item #W-10

## Subject

Request by the **San Mateo Union High School District** 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 Mohegan Lake, New York.

## Waiver Number

* 5-8-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The San Mateo Union High School District (SMUHSD) and the San Mateo 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 Shrub Oak International (SOI), an uncertified school for students with disabilities with a residential treatment center (RTC), in Mohegan Lake, New York.

The SMUHSD and the San Mateo County SELPA have not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. The high school student was in a certified NPS, Pine Hill in San Jose, placed by the district. The student was not successful and was asked to leave that placement due to extreme unsafe and assaultive behaviors towards peers and staff. The SMUHSD made an offer of free and appropriate education (FAPE) to the Creative Learning Center in Redwood City and the parents had scheduled a parent tour to finalize the placement. However, the parents did not follow through on the placement and tour as scheduled. The parents were concerned with the offers of FAPE made by the SMUHSD for a variety of different reasons. The SMUHSD was in communication and held individual education program (IEP) meetings with the parents throughout this time period. The parents unilaterally placed the student at SOI on February 20, 2020. The parents believed the student required a residential placement and the SMUHSD was offering only a day program. The SMUHSD sent a prior written notice to the parents listing the reasons they determined that SOI would not provide FAPE in the least restrictive environment (LRE). After continued IEP meetings with the parents and reviewing the program offered by SOI, the IEP team agreed that SOI, an uncertified school and RTC, was able to provide FAPE in the LRE. Due to complex needs, the student requires a highly specialized setting to continue to make progress and develop skills to be prepared to transition to a less restrictive environment and live at home.

The IEP team agreed the SOI, 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 SOI program on February 20, 2020.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the 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 SMUHSD and the San Mateo 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, August 15, 2021, to June 30, 2022.

If the State Board of Education (SBE) agrees with the CDE’s recommendation to approve the waiver with conditions, the SMUHSD and the San Mateo County SELPA will be authorized to use state and federal special education funds for the placement of the student at the SOI for the period requested.

The CDE recommends that the approval include the following conditions:

* The SMUHSD and the San Mateo County SELPA will review the student’s placement through an on-site visit to the school at least two times during the period of this waiver.
  + - After each on-site visit, the SMUHSD and the San Mateo 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 SMUHSD and the San Mateo County SELPA will consult with the SOI 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 SMUHSD and the San Mateo 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 SMUHSD and the San Mateo 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 SMUHSD meets the conditions of the waiver.

## Summary of Key Issues

The SMUHSD and the San Mateo County SELPA have not requested a child specific NPS certification waiver, previously, for this student. The high school student was in a certified NPS, Pine Hill in San Jose, placed by the district. The student was not successful and was asked to leave that placement due to extreme unsafe and assaultive behaviors towards peers and staff. The SMUHSD made an offer of free FAPE to the Creative Learning Center in Redwood City and the parents had scheduled a parent tour to finalize the placement. However, the parents did not follow through on the placement and tour as scheduled. The parents were concerned with the offers of FAPE made by the SMUHSD for a variety of different reasons. The SMUHSD was in communication and held IEP meetings with parent throughout this time period. The parents unilaterally placed the student at SOI on February 20, 2020. The parents believed the student required a residential placement and the SMUHSD was offering only a day program. The SMUHSD sent a prior written notice to the parents listing the reasons they determined that SOI would not provide FAPE in the LRE. After continued IEP meetings with the parents and reviewing the program offered by SOI, the IEP team agreed that SOI, an uncertified school and RTC, was able to provide FAPE in the LRE. Due to complex needs, the student requires a highly specialized setting to continue to make progress and develop skills to be prepared to transition to a less restrictive environment and live at home.

The IEP team agreed the SOI, 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 SOI program on February 20, 2020. The SMUHSD anticipates June 30, 2022 to be the date the student will return to the SMUHSD.

**Demographic Information:** The SMUHSD has a student population of 9,760 and is located in an urban area in San Mateo County.

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

Since the September 2018, SBE meeting, excluding this waiver submission, the SBE has received and approved 18 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 SMUHSD may utilize state and federal special education funds for the placement of this student at SOI. If this waiver is denied, the SMUHSD may utilize only local funds to support the student’s placement at SOI. The yearly cost for placement at SOI for this student is $281,614.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** SMUHSD Specific Waiver Request 5-8-2021 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-8-2021 | San Mateo Union High School District (SMUHSD) | **Requested:**  August 15, 2021, to June 30, 2022  **Recommended:** August 15, 2021, to June 30, 2022 | To waive nonpublic School (NPS) certification to allow the SMUHSD 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 | 8/12/2021 | The SMUHSD 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, September 2021

# Attachment 2: San Mateo Union High School District Specific Waiver Request 5-8-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4169047

Waiver Number: 5-8-2021

Active Year: 2021

Date In: 8/26/2021 4:56:11 PM

Local Education Agency: San Mateo Union High

Address: 650 North Delaware St.

San Mateo, CA 94401

Start: 8/15/2021

End: 6/30/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date: 8/30/2021

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: (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: The placement for our student at Shrub Oak is necessitated by multiple failed attempts to service the student in CA Certified settings in the CA and out of state. Due to the complex needs of the student, she requires a highly specialized setting to continue to make progress and develop skills to be prepared to transition to a less restrictive environment and live at home.

THE IEPS WILL NOT LOAD TO THE APPLICATION. I WILL SEND SEPARATELY. THE SYSTEM DOES NOT ALLOW FOR UPLOAD. PLEASE ADVISE.

Student Population: 50

City Type: Rural

Local Board Approval Date: 8/12/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Holly Wade

Position: Director, Special Education Services

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