

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education September 2021 Agenda Item #W-12

## Subject

Request by the **Newport-Mesa Unified School District Special Education Local Plan Area** to waive California *Education Code* Section 56366.1(e)(3), the requirement for on-site visits to the nonpublic, nonsectarian school before placement of a pupil if the local educational agency does not have any pupils enrolled at the school at the time of placement, and at least one on-site monitoring visit during each school year to the nonpublic, nonsectarian school at which the local educational agency has a pupil attending and with which it maintains a master contract.

## Waiver Number

7-5-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

Having submitted a waiver request to the State Board of Education (SBE), the Newport-Mesa Unified School District (NMUSD) Special Education Local Plan Area (SELPA) has requested to waive California *Education Code* (*EC*) Section 56366.1(e)(3). Due to the COVID-19 pandemic, the travel and school site visitations required by on-site reviews are contradictory to NMUSD travel policy put in place this school year. Additionally, some nonpublic, nonsectarian schools (NPSs) are currently only providing distance learning, causing some aspects of an on-site review to be better fulfilled through virtual consultations.

## Recommendation

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

The California Department of Education (CDE) recommends approval of this waiver, with conditions, beginning with the date the state-wide shelter-in-place order, July 1, 2020, and ending with June 30, 2021, the end of 2020–21 fiscal year. This recommendation for approval is contingent upon the following conditions, which the NMUSD has already satisfied:

* The NMUSD will review each NPS placement through a real-time virtual on-site visit prior to placement of a pupil if the NMUSD does not have any pupils enrolled in the school, or at least once per school year to any NPS at which the NMUSD has a pupil attending and with which it has a master contract. Real-time virtual on-site reviews may be utilized if the NPS is offering only distance learning or if there is a local educational agency (LEA) policy in effect during the period of this waiver which prohibits travel to the school site due to COVID-19 related travel restrictions.
* The real-time virtual on-site review, shall include, but is not limited to:
  + A review of services provided to the pupil through the individual service agreement between the LEA and the NPS consistent with the frequency, location, and duration of services as stated in the student’s individualized education program (IEP);
  + A review of progress the pupil is making toward the goals set forth in the pupil’s IEP, including the behavioral support and/or the behavioral intervention plan as applicable;
  + A virtual observation of the pupil during instruction; and
  + A virtual walkthrough of the facility.
* After each real-time virtual on-site visit, the NMUSD shall provide a written report to the CDE, Special Education Division documenting the findings of the real-time virtual onsite visit within 60 calendar days of the visit.
* This waiver and these conditions apply only to those on-site visits required and conducted by the NMUSD between July 1, 2020, and June 30, 2021.

## Summary of Key Issues

To support the needs of its various students, the NMUSD contracts with NPS to meet student needs. The NMUSD has master contracts with 19 NPSs. Of these, 8 are out of state residential treatment centers, 2 are in-state residential treatment centers, and 9 are local NPSs.

The *EC* Section 56366.1(e)(3) requires that the contracting LEA conduct on-site monitoring visits of NPS annually. During the 2020–21 school year, the NMUSD provided some level of in person services. This was true of the NPSs located within Orange County. As a result, the NMUSD was able to complete in person observations in accordance with *EC* Section 56366.1(e)(3) of these in-state NPS (9 schools, all with NMUSD students enrolled in them). However, for schools out of the county and schools out of the state, the NMUSD did not feel that COVID-19 safety precautions related to travel, quarantine, and stay-home orders supported this travel. As a result, these observations were conducted virtually and utilizing alternative means. At the time, the NMUSD had students at two in-state NPSs/residential treatment centers, and eight students at out-of-state residential treatment centers. The requested waiver is necessary to facilitate local operations and conduct monitoring visits in a safe manner during the COVID-19 pandemic and related distance learning.

The NMUSD request is to waive the "on-site" component of the NPS monitoring requirement for schools outside of Orange County. The NPS monitoring will continue through active monitoring of students during distant learning, documentation of pupil progress, engagement logs, and virtual facilities tours during the COVID-19 pandemic.

The NMUSD has already completed the virtual site reviews of the NPS in which they have students placed and have submitted the requested documentation in the waiver conditions to the CDE. The NMUSD is anticipating returning to on-site visits of the NPS for the 2021–22 school year.

The requested waiver is necessary to facilitate local operations and conduct monitoring visits in a safe manner during the COVID-19 pandemic and related distance learning requirements. The NMUSD request is to waive the "on-site" component of the NPS monitoring requirement in *EC* Section 56366.1(e)(3). The NMUSD will continue to monitor NPSs during the COVID-19 pandemic through real-time virtual on-site reviews and documentation of pupil progress as is outlined in the conditions of the waiver.

**Demographic Information:** The NMUSD has a student population of 20,173 and is located in an urban city in Orange County.

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

Since the July 2021, SBE meeting, excluding this waiver submission, the SBE has received and approved one waiver to allow LEAs to waive *EC* Section 56366.1(e)(3) and conduct on-site reviews virtually.

## Fiscal Analysis (as appropriate)

The NMUSD contracts with 19 NPSs/residential treatment centers located across Southern California and in other states. Conducting virtual consultations will result in savings from the costs of on-site reviews, including travel, lodging, and per diem expenses. However, additional costs may be incurred through the purchase of equipment or staff training, as necessary for virtual consultations.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** NMUSD SELPA Specific Waiver Request 7-5-2021 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 56366.1(e)(3)

| Waiver Number | District | Period of Request | District’s Request | CDE Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-5-2021 | Newport-Mesa Unified School District (NMUSD) Special Education Local Plan Area (SELPA) | **Requested:** July 1, 2020, to June 30, 2021  **Recommended:** July 1, 2020, to June 30, 2021 | To waive the requirement for on-site visits to NPSs prior to pupil placement and yearly pupil monitoring visits during the COVID-19 pandemic. | Approval with conditions for the period of July 1, 2020 to June 30, 2021. | 4/27/2021 | The NMUSD SELPA would be required to make on-site visits to NPSs prior to placing a student and for yearly pupil monitoring visits during the COVID-19 pandemic. | None. |

Created by California Department of Education, June 2021

# Attachment 2: Newport-Mesa Unified School District Special Education Local Plan Area Specific Waiver Request 7-5-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3066597

Waiver Number: 7-5-2021

Active Year: 2021

Date In: 5/18/2021 2:12:56 PM

Local Education Agency: Newport-Mesa Unified

Address: 2985 Bear St., Bldg. A

Costa Mesa, CA 92626

Start: 7/1/2020

End: 6/30/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Special Education Program

Ed Code Title: Non Public Agency (NPA) or School (NPS) Annual Renewal of Certification

Ed Code Section: 56366.1

Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* 56366.1(e)

(3) Commencing with the 2020–21 school year, a local educational agency that enters into a master contract with a nonpublic, nonsectarian school shall conduct, at minimum, both of the following:

(A) An [on-site] visit to the nonpublic, nonsectarian school before placement of a pupil if the local educational agency does not have any pupils enrolled at the school at the time of placement.

(B) At least one [on-site] monitoring visit during each school year to the nonpublic, nonsectarian school at which the local educational agency has a pupil attending and with which it maintains a master contract. The monitoring visit shall include, but is not limited to, a review of services provided to the pupil through the individual service agreement between the local educational agency and the nonpublic, nonsectarian school, a review of progress the pupil is making toward the goals set forth in the pupil’s individualized education program, a review of progress the pupil is making toward the goals set forth in the pupil’s behavioral intervention plan, if applicable, an observation of the pupil during instruction, and a walkthrough of the facility. The local educational agency shall report the findings resulting from the monitoring visit to the department within 60 calendar days of the [on-site] visit.

Outcome Rationale: To support the needs of its various students, the Newport-Mesa Unified School District/SELPA contracts with NPS to meet student needs. The District has master contracts with 19 NPS. Of these, 8 are out of state residential treatement centers, 2 are in-state residential treatment centers, and 9 are local non-public day schools.

Education code 56366.1(e) (3) requires that the contracting LEA conduct on-site monitoring visits of NPS annually. During the 2020-2021 school year, the District provided some level of in person services. This was true of the non-public schools located within Orange County. As a result, the District was able to complete in person observations in accordance with Ed Code 56366.1(e)(3) of these in-state non-public schools (9 schools, all with District students enrolled in then). However, for schools out of the county and schools out of the state, the District did not feel that COVID-19 safety precautions related to travel, quarantine, and stay-home orders supported this travel. As a result, these observations were conducted virtually and utilizing alternative means. At the time the District conferred with association staff, outlined below, the District had students at two out-of-state non-public schools/residential treatment centers, and no students at in-state residential treatment centers.

The requested waiver is necessary to facilitate local operations and conduct monitoring visits in a safe manner during the COVID-19 pandemic and related distance learning. The Newport-Mesa Unified School District/SELPA request is to waive the "on-site" component of the nonpublic school monitoring requirement for schools outside of orange county. Nonpublic school monitoring will continue through active monitoring of students during district learning, documentation of pupil progress, engagement logs and virtual facilities tours during the COVID-19 pandemic.

Student Population: 20173

City Type: Urban

Local Board Approval Date: 4/27/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Sara Jocham

Position: Assistant Superintendent

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Bargaining Unit Date: 04/07/2021

Name: NMFT

Representative: Tamara Fairbanks

Title: President

Phone: 949-275-5915

Position: Support

Comments: