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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Jennifer Blake, Executive Director

Meeting Date April 14, 2021

Subject Waiver Request - California Department of Education - To Permit Virtual Non-Public School Monitoring - Special Education Department

Ask of the Board Adoption by the Board of Education of Resolution No. 2021-0202 - Authorizing Staff to Submit a Waiver to CDE Requesting Relief from Education Code 56366.1(e)(3) Requirement of On-Site Non-Public School Monitoring.

Background EC 56366.1(e)(3) requires Special Education Local Plan Areas (SELPA) to conduct on-site monitoring to Non-Public Schools (NPS) and/or Residential Treatment Centers (RTC) which include a pre-placement visit and annual monitoring visit. Due to COVID-19, OUSD, Alameda County, and NPS sites have restricted travel and visitors. However, the state has not waived this requirement. Therefore, SELPA must file a waiver in order to not be compelled to complete in-person visits.

Discussion For the 2020-21 school year, Special Education has been meeting with NPS and RTC sites virtually (interview with staff and student, virtual tour of the facility, observing the class). Required forms will be submitted after each virtual tour is completed. Currently, OUSD does not have bargaining agreements that enable us to compel our staff who oversee the placement of students in nonpublic schools to report to site visits in person, which may require travel across the country. As such, we are asking that the Board approve the waiver through the CDE-adopted process to allow our staff to perform virtual site visits to meet the requirements of EC 56366.1.

Fiscal Impact No Fiscal Impact

Attachment(s)

- Resolution No. 2021-0202
- Waiver Template
- Education Code Section 56366.1

RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
NO# 2021-0202

Waiver Request to the California Department of Education to Allow for virtual monitoring of Non-public Schools (NPS) rather than On-Site visits

WHEREAS, EC 56366.1 requires Special Education Local Plan Areas (SELPA) to conduct on-site monitoring to Non-Public Schools (NPS) and/or Residential Treatment Centers (RTC) which include a pre-placement visit and annual monitoring visit; and

WHEREAS, Due to COVID-19, OUSD, Alameda County, and NPS sites have restricted travel and visitors; and

WHEREAS, the California Department of Education has nevertheless not waived this Ed. code requirement; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the District, as follows:

Section 1. Approval of Waiver. The District's Board hereby authorizes staff to submit a waiver request through the CDE-adopted process to allow our staff to perform virtual site visits to meet the requirements of EC 56366.1.

Section 2. Submission of Waiver. The Board hereby authorizes District staff to submit to the California Department of Education and any other state and federal agency any and all required documents confirming the Board's authorization made above; to take all other actions required by the State of California and/or federal government, as by law to effect the aforementioned waiver; and to take all other actions necessary within the District to effect the aforementioned waiver.

Section 3. Approval of Actions. All actions heretofore taken and to be taken by District staff, as set forth above, are hereby approved, confirmed, and ratified.

Section 4. Effective Date This resolution shall take effect from and after the date of adoption

PASSED AND ADOPTED this 14th day of April, 2021, at a Regular Meeting of the Governing Board by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSED: None

AYES: Aimee Eng, Gary Yee, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Shanthi Gonzales

NOES: VanCedric Williams, Mike Hutchinson

ABSTAINED: None

RECUSED: NONE

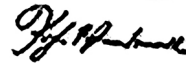
ABSENT: Samantha Pal (Student Director), Jessica Ramos (Student Director)

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution passed at a Regular Meeting of the Governing Board of the Oakland Unified School District, held on April 14th, 2021

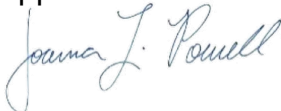
4/15/2021

Date



Kyla Johnson-Trammell
Secretary, Governing Board
Oakland Unified School District

Approved as to form by OUSD Staff Attorney Joanna Powell on 3/19/2021.



[Logoff](#)

Waiver Request System

Submission

Instructions:

- Fields marked with an asterisk (*) are required.
- The format for all dates is mm/dd/yyyy.
- Use the 'Attachments' section below to attach all supporting documents if required.
- For General Waivers – you will not be allowed to submit your waiver without attaching the following:
 - ◆ Documentation of Evidence of the advisory council
 - ◆ Documentation of bargaining unit participation
- Make sure all information is accurate before selecting submit. You will not be able to edit this waiver once you have submitted the form.
- DO NOT at any time hit the back button. You will lose all your information.
- Use brackets [] for putting Education Code section to be waived. See FAQ for details.
- Do not use abbreviations for bargaining units.
- Refer to the FAQ for general questions.
- The waiver request page is time sensitive. You must be able to complete the waiver request within two hours. Failure to complete and submit the waiver request in the two hours will result in the loss of all previously entered information.

District Information

*County:

*District:

*Address:

*City:

*State:

*Zip code:

Fax:

Waiver Information

*Period of request start date:

*Period of request end date:

*Is this waiver a renewal? ☐ No ☐ Yes

*Waiver topic:

*Ed Code title:

*Ed Code section:

*Ed Code authority:

*Education Code or California Code of Regulations (CCR) section to be Waived. If the request is to waive a portion of a section, type the text of the pertinent sentence of the law, or those exact phrases requested to be waived (use [] to strike out).

*Student population

*Located in a(n) city

*Describe briefly the circumstances that brought about the request and why the waiver is necessary to achieve improved student performance and/or streamline or facilitate local agency operations. If more space is needed, please attach additional documents using the 'Attachments' section below.

Approvals/Review

*Local board approval date:

Bargaining Unit

All general waivers require bargaining unit participation in the development of the waiver.

If the specific waiver you are submitting requires bargaining unit participation select yes and complete the required information. If it does not require bargaining unit participation, select no.

*Does the district have any employee bargaining units? ☐ No ☐ Yes

Please upload documentation evidencing the union's participation in the development of the waiver and the union's position. If the bargaining unit did not participate in the development of the waiver, please give detailed reasons and submit all relevant documentation, including communications requesting such participation and the bargaining unit's response, if any, to the request.

Attachments

*Is this waiver associated with an apportionment related audit penalty? (per EC 41344) ☐ No ☐ Yes

*Has there been a Federal Program Monitoring (FPM) finding on this issue? ☐ No ☐ Yes

If needed, upload additional file(s) here (must be Word, Excel, or PDF format)

No file chosen

Contact Information

*Title:

*First name:

*Last name:

*Position:

*E-mail:

*Area code:

*Telephone:

Extension:

☐ I hereby certify that I have gone through my authorizing school district and or Special Education Local Plan Area (SELPA), that I am the superintendent or the superintendent's designee and that the information provided on this application is true and correct.

[Menu](#)

[Questions: Waiver Office | 916-319-0824](#)

California Department of Education
1430 N Street
Sacramento, CA 95814

[Web Policy](#)

State of California

EDUCATION CODE

Section 56366.1

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the Superintendent on forms provided by the department, and shall include all of the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) (A) (i) Commencing with the 2020–21 school year, documentation that the nonpublic, nonsectarian school or agency will train staff who will have contact or interaction with pupils during the schoolday in the use of evidence-based practices and interventions specific to the unique behavioral needs of the nonpublic, nonsectarian school or agency’s pupil population. The training shall be provided within 30 days of employment to new staff who have any contact or interaction with pupils during the schoolday, and annually to all staff who have any contact or interaction with pupils during the schoolday.

(ii) For a nonpublic, nonsectarian school or agency that was in existence as of the January 1 immediately preceding a school year, documentation that the nonpublic, nonsectarian school or agency’s staff members who will have contact or interaction with pupils during the schoolday have received training that complies with the requirements of subparagraphs (B) and (C).

(B) The training described in this paragraph shall be selected and conducted by the nonpublic, nonsectarian school or agency and shall satisfy all of the following conditions:

(i) Be conducted by persons licensed or certified in fields related to the evidence-based practices and interventions being taught.

(ii) Be taught in a manner consistent with the development and implementation of individualized education programs.

(iii) Be consistent with the requirements of Article 5.2 (commencing with Section 49005) of Chapter 6 of Part 27, relating to pupil discipline.

(C) The content of the training described in this paragraph shall include, but is not limited to, all of the following:

(i) Positive behavioral intervention and supports, including collection, analysis, and use of data to inform, plan, and implement behavioral supports.

(ii) How to understand and address challenging behaviors, including evidence-based strategies for preventing those behaviors.

(iii) Evidence-based interventions for reducing and replacing challenging behaviors, including deescalation techniques.

(D) (i) The contracting local educational agency shall verify the nonpublic, nonsectarian school or agency's compliance with the requirements of this paragraph, and the nonpublic, nonsectarian school or agency shall report the contracting local educational agency's verification to the Superintendent annually with the annual certification documents described in subdivision (h).

(ii) For a nonpublic, nonsectarian school or agency seeking initial certification, the contracting local educational agency shall verify that the plan and timeline for training provided pursuant to this paragraph are included in the master contract.

(iii) For a nonpublic, nonsectarian school or agency not in existence as of the January 1 immediately preceding a school year, the contracting local educational agency shall, 30 days following the commencement of the school year, verify that the nonpublic, nonsectarian school or agency provided the training required by this paragraph, and shall submit the verification to the Superintendent at that time.

(iv) The nonpublic, nonsectarian school or agency shall maintain written records of the training provided pursuant to this paragraph, and shall provide written verification of the training upon request.

(5) Commencing with the 2021–22 school year, documentation that the administrator of the nonpublic, nonsectarian school holds or is in the process of obtaining one of the following:

(A) An administrative credential granted by an accredited postsecondary educational institution and two years of experience with pupils with disabilities.

(B) A pupil personnel services credential that authorizes school counseling or psychology.

(C) A license as a clinical social worker issued by the Board of Behavioral Sciences.

(D) A license in psychology regulated by the Board of Psychology.

(E) A master's degree issued by an accredited postsecondary institution in education, special education, psychology, counseling, behavioral analysis, social work, behavioral science, or rehabilitation.

(F) A credential authorizing special education instruction and at least two years of experience teaching in special education before becoming an administrator.

(G) A license as a marriage and family therapist certified by the Board of Behavioral Sciences.

(H) A license as an educational psychologist issued by the Board of Behavioral Sciences.

(I) A license as a professional clinical counselor issued by the Board of Behavioral Sciences.

(6) An annual operating budget.

(7) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations that include criminal record summaries required of all nonpublic, nonsectarian school or agency personnel having contact with minor children under Section 44237.

(b) (1) The applicant shall provide the special education local plan area in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The local educational agency representatives shall acknowledge that they have been notified of the intent to certify or renew certification. The acknowledgment shall include a statement that representatives of the local educational agency for the area in which the applicant is located have had the opportunity to review the application at least 60 calendar days before submission of an initial application to the Superintendent, or at least 30 calendar days before submission of a renewal application to the Superintendent. The acknowledgment shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the local educational agency has not acknowledged an applicant's intent to be certified 60 calendar days from the date of submission for initial applications or 30 calendar days from the date of the return receipt for renewal applications, the applicant may file the application with the Superintendent.

(3) The department shall provide electronic notification of the availability of renewal application materials to certified nonpublic, nonsectarian schools and agencies at least 120 days before the date their current certification expires.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the Superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the Superintendent.

(e) (1) Before certification, the Superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The Superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The Superintendent shall conduct an additional onsite review of the facility and program within three years of the effective date of the certification, unless the Superintendent conditionally certifies the nonpublic, nonsectarian school or agency, or unless the Superintendent receives a formal complaint against the nonpublic, nonsectarian school or agency. In the latter two cases, the Superintendent shall conduct an onsite review at least annually.

(2) In carrying out this subdivision, the Superintendent may verify that the nonpublic, nonsectarian school or agency has received a successful criminal background check clearance and has enrolled in subsequent arrest notice service, pursuant to Section 44237, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency.

(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 onsite 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 onsite 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 onsite visit. On or before June 30, 2020, the department shall, with input from special education local plan area administrators, create and publish criteria for reporting this information to the department.

(f) The Superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the Superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31 of the current school year. If certification is denied, the Superintendent shall provide reasons for the denial. The Superintendent shall not certify the nonpublic, nonsectarian school or agency for a period longer than one year.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the Superintendent. Certification may be retroactive if the nonpublic, nonsectarian school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The Superintendent annually shall review the certification of each nonpublic, nonsectarian school or agency. For this purpose, a certified nonpublic, nonsectarian school or agency annually shall update its application between August 1 and October 31, unless the state board grants a waiver pursuant to Section 56101. The Superintendent may conduct an onsite review as part of the annual review.

(i) (1) The Superintendent shall conduct an investigation of a nonpublic, nonsectarian school or agency onsite at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The Superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite investigation. The Superintendent shall require a written response to any noncompliance or deficiency found.

(2) A nonpublic, nonsectarian school or agency shall notify the department and the local educational agency with which it has a master contract of any pupil-involved incident at the school or agency in which law enforcement was contacted. This notification shall be provided in writing, no later than one business day after the incident occurred.

(3) With respect to a nonpublic, nonsectarian school or agency, the Superintendent shall conduct an investigation, which may include an unannounced onsite visit, if the Superintendent receives evidence of a significant deficiency in the quality of educational services provided, a violation of Section 56366.9, or noncompliance with the policies expressed by subdivision (b) of Section 1501 of the Health and Safety Code by the nonpublic, nonsectarian school or agency. The Superintendent shall document the complaint and the results of the investigation and shall provide copies of the documentation to the complainant, the nonpublic, nonsectarian school or agency, and the contracting local educational agency.

(4) Violations or noncompliance documented pursuant to paragraph (1) or (3) shall be reflected in the status of the certification of the nonpublic, nonsectarian school or agency, at the discretion of the Superintendent, pending an approved plan of correction by the nonpublic, nonsectarian school or agency. The department shall retain for a period of 10 years all violations pertaining to certification of the nonpublic, nonsectarian school or agency.

(5) In carrying out this subdivision, the Superintendent may verify that the nonpublic, nonsectarian school or agency received a successful criminal background check clearance and has enrolled in subsequent arrest notice service, pursuant to Section 44237, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency.

(j) The Superintendent shall monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standards-focused instructional materials used, of an existing certified nonpublic, nonsectarian school or agency on a three-year cycle, as follows:

(1) The nonpublic, nonsectarian school or agency shall complete a self-review in year one.

(2) The Superintendent shall conduct an onsite review of the nonpublic, nonsectarian school or agency in year two.

(3) The Superintendent shall conduct a followup visit to the nonpublic, nonsectarian school or agency in year three.

(k) (1) Notwithstanding any other law, the Superintendent shall not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 before the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff who will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered.

(3) In addition to the requirements in subdivisions (a) to (f), inclusive, the Superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Notwithstanding any other law, the certification becomes effective no earlier than July 1 if the nonpublic, nonsectarian school or agency provided the notification required pursuant to paragraph (1).

(I) (1) Notwithstanding any other law, the Superintendent shall not certify or renew the certification of a nonpublic, nonsectarian school that also operates a licensed children's institution, unless all of the following conditions are met:

(A) The entity operating the nonpublic, nonsectarian school maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school identified separately from any licensed children's institution that it operates.

(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

(C) The entity submits an entitywide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the educational program provided by the nonpublic, nonsectarian school.

(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program.

The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

(2) For purposes of this section, “licensed children’s institution” has the same meaning as it is defined by Section 56155.5.

(m) (1) The nonpublic, nonsectarian school or agency shall be charged a reasonable fee for certification. The Superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for local control funding formula allocations pursuant to Section 42238.02, as implemented by Section 42238.03, of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the school district local control funding formula allocation pursuant to Section 42238.02, as implemented by Section 42238.03, for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1–5 pupils	\$ 300
(2) 6–10 pupils	500
(3) 11–24 pupils	1,000
(4) 25–75 pupils	1,500
(5) 76 pupils and over	2,000

(2) The nonpublic, nonsectarian school or agency shall pay this fee when it applies for certification and when it updates its application for annual renewal by the Superintendent. The Superintendent shall use these fees to conduct onsite reviews, which may include field experts. A fee shall not be refunded if the application is withdrawn or is denied by the Superintendent.

(n) (1) Notwithstanding any other law, only those nonpublic, nonsectarian schools or agencies that provide special education and designated instruction and services using administrators and staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified. Commencing with the 2021–22 school year, this paragraph shall not apply to administrators.

(2) Commencing with the 2021–22 school year, notwithstanding any other law, only those nonpublic, nonsectarian schools or agencies that provide special education and related services using administrators who hold or are in the process of obtaining a credential, degree, or license in accordance with paragraph (5) of subdivision (a) are eligible to be certified.

(3) The state board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the state board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

(p) (1) Notwithstanding subdivision (n) of Section 44237, and for purposes of enabling the Superintendent to carry out the duties pursuant to this section, a nonpublic, nonsectarian school or agency shall, upon demand, make available to the Superintendent evidence of a successful criminal background check clearance and enrollment in subsequent arrest notice service, conducted pursuant to Section 44237, for each owner, operator, and employee of the nonpublic, nonsectarian school or agency.

(2) The nonpublic, nonsectarian school or agency shall retain the evidence and store it in a locked file separate from other files.

(Amended by Stats. 2019, Ch. 454, Sec. 3. (AB 1172) Effective January 1, 2020.)