

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationMay 2019 AgendaItem #W-10

## Subject

Request by **Dublin Unified School District** to waive California *Education Code* Section 56366.1(a), the requirement for state certification to allow the uncertified out-of-state nonpublic school located in Ogden, Utah to provide services to one student with disabilities.

## Waiver Number

5-2-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Dublin Unified School District (DUSD) contacted five out-of-state California certified nonpublic schools (NPSs) and residential treatment centers in an attempt to offer a free appropriate public education (FAPE) to one high school student with significant emotional, behavioral, and mental health needs. These placement options either could not accept the student, or could not meet the student’s comprehensive, unique needs.

The Oakgrove School at Waterfall Academy (OSWA), an uncertified out-of-state NPS in Ogden, Utah, accepted the student and can meet the student’s educational and therapeutic needs. The DUSD and the student’s parents believe OSWA is the most appropriate placement to provide FAPE to the student.

The DUSD requests to waive California *Education Code* (*EC*) Section 56366(d), the requirement for state certification, to allow the use of state and federal special education funds for the placement of this student at OSWA.

## Recommendation

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

As the DUSD has submitted all required documents as part of its waiver request, the California Department of Education recommends approval of this waiver, with conditions, for the period requested, January 10, 2019, through June 30, 2020. This recommendation for approval is contingent upon the following conditions:

* The DUSD will consult with the OSWA liaison monthly to monitor the provision of services, and review the student’s progress via email, phone calls, and review of program data. Program data will include the progress on individual educational program (IEP) goals, school attendance, work completion rate, grades, active participation in therapeutic interventions, incident and safety reports, and behavior intervention reports.
* The DUSD will participate in clinical team conferences with the OSWA, the Tri-Valley Special Education Local Plan Area (SELPA) Residential Placement Specialist(s), and the student’s parent(s) no less than monthly to monitor the provision of counseling services and review the student’s therapeutic progress via e-mail and/or phone.
* The DUSD will schedule IEP meetings 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.
* The DUSD will consult and coordinate with the Tri-Valley SELPA to review the student’s placement on-site at least two times while the student is attending OSWA, and within the waiver period of January 10, 2019, to June 30, 2020.

## Summary of Key Issues

An eighteen year old student with significant emotional, behavioral, and mental health needs had been attending Heritage Schools, Inc. (HSI), a California certified NPS with a residential treatment program. The student returned to the DUSD when they turned eighteen years old as the HSI does not serve students over the age of eighteen.

The DUSD contacted five out-of-state California certified NPSs with residential treatment programs in an attempt to find an appropriate placement for the student. The schools contacted either could not accept the student, or could not meet the student’s unique needs. Placement options for the student are limited due to the combination of the student’s age and their emotional and behavioral needs.

The OSWA, an uncertified, out-of-state NPS in Ogden, Utah accepted the student, and is able to provide the IEP services the student needs to graduate from high school. The student’s parents and the DUSD agree that the OSWA is the most appropriate placement to meet the student’s educational and therapeutic needs, and implement the IEP. The student was placed at the OSWA on a settlement agreement dated January 7, 2019, and is currently attending the school.

This placement does not abrogate any right provided to students with disabilities and their parents or guardians under the federal Individuals with Disabilities Education Act, or affect the compliance of DUSD with federal laws and regulations. In addition, before contracting with the nonpublic, nonsectarian school outside of this state, the DUSD documented its efforts to use public schools and to identify an appropriate nonpublic, nonsectarian school or agency program, or both, within the state.

**Demographic Information:** The DUSD has a student population of 12,300 and is located in an urban area in Alameda County.

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

Within the past two years, the State Board of Education has received and approved 11 waivers similar to this allowing local educational agencies to waive *EC* Section 56366.1(a), the requirement for state certification.

## Fiscal Analysis (as appropriate)

If this waiver is approved, the DUSD may use state and federal special education funds for the placement of this student at the OSWA. If this waiver is denied, the DUSD may only use local funds to support the student’s placement at the OSWA.

The yearly cost for placement at the OSWA for this student is approximately $141,110.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Dublin Unified School District Specific Waiver Request
5-2-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 56366(d)

| Waiver Number | District | Period of Request | District’s Request | CDE Recommended | Local Board and Public Hearing Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-2-2019 | Dublin Unified School District (DUSD) | **Requested:** January 10, 2019, to June 30, 2020**Recommended:** January 10, 2019, to June 30, 2020 | To waive nonpublic school (NPS) certification to allow the DUSD to use state and federal special education funds for the placement of a student in an uncertified out-of-state NPS | Approval with conditions for the period recommended | January 8, 2019 | The DUSD may not use state and federal special education funds for the placement of the student at the uncertified out-of-state NPS | None |

Created by California Department of Education

March 2019

# Attachment 2: Waiver 5-2-2019 Dublin Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 0175093

Waiver Number: 5-2-2019

Active Year: 2019

Date In: 2/6/2019 4:46:57 PM

Local Education Agency: Dublin Unified School District

Address: 7471 Larkdale Ave.

Dublin, CA 94568

Start: 1/10/2019

End: 6/30/2020

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366.1(a)

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: 56366(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: Due to student's (SSID: 5138990392) significant emotional, behavioral and mental health needs, student was receiving services at Heritage Schools, Inc. in Utah. Just prior to student's 18th birthday, Dublin Unified School District (DUSD) was informed that Heritage does not serve students beyond their 18th birthday. The IEP team determined that student whose primary eligibility is Emotional Disturbance continues to need a residential placement with an academic program as student needs about 70 units to graduate with a high school diploma. Five nonpublic schools who offer residential treatment programs were contacted; none were found to serve students age 18 and older. A sixth nonpublic school, was found to serve students age 18 and older, however, declined enrollment of student (SSID: 5318990392) due to behavioral concerns. Oakgrove School at Waterfall Canyon Academy, an non-certified, out-of-state nonpublic school accepted the student. See Supplemental Form for Nonpublic School-Agency Waiver attached.

Student Population: 37

City Type: Urban

Local Board Approval Date: 1/8/2019

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jennifer Chiarelli

Position: Director, Special Education

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