

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education January 2020 Agenda Item #W-11

## Subject

Request by **Sweetwater Union High 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 one high school student with disabilities at an uncertified out-of-state school for students with disabilities located in Milford, Massachusetts.

## Waiver Number

1-7-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Sweetwater Union High School District (SUHSD) requests to waive California *Education Code* (*EC*) Section 56366(d), the requirement for state certification, to allow them to use state and federal special education funds for the placement of one high school student with disabilities at the Evergreen Center, an uncertified out-of-state school and residential treatment center (RTC) located in Milford, Massachusetts.

After exhausting all district placement options, the SUHSD and the San Diego County Office of Education contacted California certified in-state and out-of-state nonpublic schools (NPSs) and nonpublic agencies (NPAs) with RTCs to find a placement suitable for one high school student with disabilities requiring immediate placement due to the severity of their disabilities and related behaviors. These placement options could not meet the student’s unique needs, or would not accept the student into their program.

The Individualized Education Program (IEP) team, which include the student’s parents, agreed the Evergreen Center, an uncertified school and RTC, is able to meet the student’s comprehensive, unique needs to provide the student with a Free Appropriate Public Education (FAPE). The Evergreen Center accepted the student into their program, and the student was placed in the program on May 1, 2019.

**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 (LEA) 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 school that is able to meet the student’s needs. As members of the IEP team, the student’s parents must be included in the decision-making process and must provide written consent to 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 SED will recommend approval of the waiver with conditions.

## Recommendation

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

As the SUHSD 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, May 1, 2019, through June 30, 2020. This recommendation for approval is contingent upon the following conditions:

* The SUHSD will consult and coordinate with their Special Education Local Plan Area to review the student’s placement through on-site visits to the school at least two times during the period of this waiver.
  + After each onsite visit, the SUHSD shall provide written reports to the CDE Special Education Division (SED) documenting the findings of the visit. 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 onsite review.
* The SUHSD will consult with the Evergreen Center liaison monthly to monitor the provision of services, review the student’s progress via email and/or phone calls, and review program data. Program data includes the student’s progress on their IEP goals, school attendance, work completion rate, grades, participation in the therapeutic program, and emergency/incident/safety reports.
* The SUHSD will contact the student and the student’s parents monthly to discuss progress and to address any concerns.
* The SUHSD will schedule IEP meetings at a minimum of every four months to review program data and make any necessary changes in the student’s academic and/or therapeutic program.

If the waiver is approved, the SED will monitor to ensure the SUHSD meets the conditions of the waiver.

## Summary of Key Issues

Prior to the student’s placement at the Evergreen Center, the student received behavioral therapy by a NPA at a ratio of one student to four adults within a district school setting. The student’s disability of autism and associated extreme aggressive and assaultive behaviors prevented the student from being placed in a setting with other students. When the student did not demonstrate significant progress after eight months of behavioral services, the IEP team determined the student required a RTC to support the student’s behavioral and academic needs. After exhausting all district and county RTC placement options the SUHSD contacted the limited in-state NPSs and NPAs with RTCs. These placement options could not meet the student’s unique needs or would not accept the student into their programs. The SUHSD then considered eight out-of-state schools with RTCS where seven of the schools declined the student. The out-of-state, uncertified school, Evergreen Center, located in Milford, Massachusetts, accepted the student into their program for students with autism with associated behavioral challenges. The IEP team agreed the Evergreen Center is the most appropriate placement to meet the student’s unique needs. TheSUHSD anticipates June 1, 2020 to be the date the student will return to the SUHSD.

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

**Demographic Information:** The SUHSD has a student population of 40,364 and is located in an urban area in San Diego 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 9 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 SUHSD may utilize state and federal special education funds for the placement of this student at the Evergreen Center. If this waiver is denied, SUHSD may utilize only local funds to support the student’s placement at the Evergreen Center.

The annual cost for placement at the Evergreen Center for this student is $358,472.30.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Sweetwater Union High School District Specific Waiver Request 1-7-2017 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-7-2019 | Sweetwater Union High School District (SUHSD) | **Requested:**  May 1, 2019, to June 30, 2020  **Recommended:** May 1, 2019, to June 30, 2020 | To waive nonpublic school (NPS) certification to allow SUHSD 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 requested | April 22, 2019 | The SUHSD 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

August 2019

# Attachment 2: Waiver 1-7-2019 Sweetwater Union High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768411

Waiver Number: 1-7-2019

Active Year: 2019

Date In: 7/2/2019 10:26:17 AM

Local Education Agency: Sweetwater Union High

Address: 1130 Fifth Ave.

Chula Vista, CA 91911

Start: 5/1/2019

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: {"Nonpublic, nonsectarian school" means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an Individualized education program and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, or a public university or college. A nonpublic, nonsectarian school also shall meet standards as prescribed by the Superintendent and board."}

Outcome Rationale: Student ID #m 1055022, is a young adult aged 18 years and nine months, identified with a primary disability of autism. He engages in severe assaultive behavior as a result of his disability, causing serious bodily injury to other students and adults. The IEP team determined that the student required a residential treatment center to support his behavioral and academic needs. The District and County offices of Special Education contacted many in-state nonpublic schools and nonpublic agencies including residential treatment centers; however, none of them would accept the student. The uncertified out-of-state nonpublic school, Evergreen Center, located in Milford, Massachusetts, accepted the student.

Student Population of SUHSD: 40,364

City Type: Urban

Local Board Approval Date: 4/22/2019

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Ms. Carrie Rea

Position: Director, Special Services

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