

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education March 2023 Agenda Item #W-08

## Subject

Request by the **Oceanside Unified School District** and the North Coastal Consortium for Special Education to waive California *Education Code* Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of one middle school student with disabilities at the Devereux Texas Treatment Network, an uncertified nonpublic school for students with disabilities with a residential treatment center, in League City, Texas.

## Waiver Number

6-8-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Oceanside Unified School District (OUSD) and North Coastal Consortium for Special Education (NCCSE) are seeking a waiver of the *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 middle school student with disabilities at the Devereux Texas Treatment Network (DTTN), an uncertified school for students with disabilities with a residential treatment center (RTC), in League City, Texas

The OUSD has previously requested a child specific nonpublic school (NPS) certification waiver for this student. The waiver for this student was previously approved by the State Board of Education (SBE) during the July 2022 meeting, Item #W-13. The prior waiver approved the placement of the student at DTTN until August 31, 2022. The OUSD submitted documentation meeting the required conditions for the prior waiver. This renewal would allow the student to stay in the current placement until September 1, 2023.

The student was enrolled at DTTN beginning January 31, 2022. Prior to the initial placement of the student at the DTTN, the OUSD exhausted all district placement options before contacting multiple in-state and out-of-state NPSs having RTCs to find a suitable placement for the student.

Since placement in January, the student has continued to demonstrate slow and steady progress, as evidenced in their most recent IEP. Therefore, the IEP team continues to believe this placement is the best option for the student and that the student will continue to receive educational benefit and a FAPE. Since the student was originally placed at DTTN, the OUSD IEP has held updated Individualized Education Plan (IEP) meetings along with a Tri-annual assessment. The IEP team, along with the parents, continue to recommend DTTN as the best placement.

## 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 (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 Individualized Education Plan (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 OUSD and NCCSE provided the CDE with all required waiver submission documents. The CDE has reviewed these documents and recommends approval of this waiver, with conditions, for the time period the student is placed at the DTTN, September 1, 2022 through September 1, 2023. This recommendation of approval is contingent upon the following conditions:

* The OUSD will consult and coordinate with the NCCSE to review the student’s placement through an on-site visit to the school at least two times during the period of this waiver. The on-site visits with the school may be accomplished through real-time virtual consultations if there is an LEA policy in effect during the period of this waiver which prohibits travel to the school site due to travel restrictions.
  + After each onsite visit the OUSD and the NCCSE shall provide written reports to the CDE’s 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 onsite review.
* The OUSD and the NCCSE will consult with the DTTN liaison monthly to monitor the provision of services and review the student’s progress using email, phone calls, and/or real-time virtual consultations. The monthly consultation will also include a 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 OUSD and the NCCSE will contact the student and the individual who holds the educational rights of the student, each month, to discuss the student’s progress and to address any concerns.
* The OUSD and the NCCSE 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 OUSD meets the conditions of the waiver.

## Summary of Key Issues

The OUSD has placed the student in a variety of educational placements within and outside of the LEA. The IEP team recommended residential treatment due to local school programs and NPS programs’ inability to manage the student’s high level of aggression and other behavioral needs. The student had been placed in two local NPS’ but those placements were unsuccessful. The student was subsequently placed in a different out-of-state NPS on December 1, 2021, due to the severity of the student’s self-injurious behaviors, verbal aggression, and physical aggression. The NPS provided a 20-day notice to the district on December 10, 2021, indicating that to maintain safety, the student required a higher level of staff intervention than the NPS could provide.

The DTTN reviewed the student’s educational and psychological records upon admittance on January 31, 2022, and are able to implement the student’s IEP. This facility specializes in treating students with emotional disabilities with co-occurring developmental and learning difficulties. The DTTN can provide specialized academic instruction, therapeutic services and all other services outlined in the student’s IEP. Since placement at DTTN in January 2022, the student has continued to demonstrate slow and steady progress, as evidenced in their most recent IEP. Therefore, the IEP team continues to believe this placement is the best option for the student and that the student will continue to receive educational benefit and a FAPE.

The student is scheduled to return to the OUSD on September 1, 2023.

**Demographic Information:** The OUSD has a student population of 18,671 and is located in an urban area in San Diego County.

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

Since the September 2019 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 29 approved 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

If this waiver is approved, the OUSD may utilize state and federal special education funds for the placement of this student at the DTTN. If this waiver is denied, the OUSD may utilize only local funds to support the student’s placement at DTTN. The yearly cost for placement at DTTN for this student is $426,583.15.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** OUSD Specific Waiver Request 6-8-2022 (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 Recommendation | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-8-2022 | Oceanside Unified School District  (OUSD) | **Requested:** September 1, 2022, to September 1, 2023  **Recommended:** September 1, 2022, to September 1, 2023 | To waive NPS certification to allow the OUSD 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 | February 8, 2022 | The OUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | 6-2-2022-W-13 |

Created by California Department of Education: October 2022

# Attachment 2: Waiver 6-8-2022 Oceanside Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3773569

Waiver Number: 6-8-2022

Active Year: 2022

Date In: 8/23/2022 1:54:20 PM

Local Education Agency: Oceanside Unified

Address: 2111 Mission Ave.

Oceanside, CA 92058

Start: 9/1/2022

End: 9/1/2023

Waiver Renewal: Y

Previous Waiver Number: 6-2-2022-W-13

Previous SBE Approval Date: 7/13/2022

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: (*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 a student with disabilities at an uncertified out-of-state nonpublic school for students with disabilities located in Texas.

Outcome Rationale: In 2021/2022 the student was not accepted to a CDE certified NPS/residential placement.

Student was enrolled at Devereux Advanced Behavioral Health beginning Jan 31, 2022. She’s been making slow steady progress and moving her to another program would be detrimental to her progress given this is the student’s 3rd NPS/ residential placement in the past year.

Student Population: 10

City Type: Rural

Local Board Approval Date: 2/8/2022

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Cheri Bene

Position: Interim Director of Special Education

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