

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationMarch 2023 AgendaItem #W-10

## Subject

Request by the Sweetwater Union High School District and the San Diego South County Special Education Local Plan Area 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 high 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

8-5-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Sweetwater Union High School District (SUHSD) and the San Diego South County Special Education Local Plan Area (San Diego South County SELPA) is 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 high 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 SUHSD has not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to the placement of the student at the DTTN, the SUHSD exhausted all district placement options before contacting multiple in-state and out-of-state NPSs with RTCs to find a suitable placement for the student. The SUHSD contacted over 30 certified and non-certified facilities in California and out of state. All of the placements either declined the application or do not have the services necessary for the student to receive a free and appropriate public education (FAPE). In each instance of denial, the facilities would not accept the student, because they could not appropriately address the student’s needs and/or did not have any projected openings.

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

The SUHSD provided the CDE with all required waiver submission documents. The CDE has reviewed these documents and recommends approval of this waiver, for the time period the student is placed at the DTTN, March 1, 2022 through March 1, 2023. The CDE recommends no conditions at this time since this waiver is retroactive and the student is no longer attending the out-of-state placement and has returned to a California school. The SUHSD met all the conditions that the CDE would have recommended as a condition of approval of the waiver, as described below:

* The SUHSD consulted and coordinated with the San Diego South County SELPA to review the student’s placement through an on-site visit to the school and/or via real-time virtual consultations at least two times during the period of this waiver.
	+ After each onsite visit the SUHSD and the San Diego South County SELPA provided written reports to the CDE’s SED documenting the findings of the visit, or consultation. These reports were required to 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 and the San Diego South County SELPA consulted 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 also included a review of program data. Program data included the progress on IEP goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.
* The SUHSD and the San Diego South County SELPA contacted 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 SUHSD and the San Diego South County SELPA scheduled IEP meetings 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.

## Summary of Key Issues

The student has attended various school placements during elementary and middle school. Since the student’s ninth grade year, there have been concerns with the student’s social and emotional functioning. In order to address these concerns, the SUHSD has provided the student specialized academic supports, behavior and counseling services; however, the student minimally accessed these due to absences and other behavior issues.

The SUHSD completed an assessment in February 23, 2022 due to concerns regarding the student’s lack of progress. The student continues to struggle with: academic task completion, aggression and elopement behaviors. The IEP team discussed a continuum of services for the student but due to the student’s high level of elopement, interventions in a less restrictive setting have not been sufficient to meet their needs. Therefore, the IEP team determined that residential treatment is needed to implement the student’s IEP.

The DTTN has reviewed the student’s educational and psychological records and they have reported they are able to implement the student’s IEP. This facility specializes in treating students with emotional disabilities with co-occurring developmental and learning difficulties. In addition, the facility is able to provide services to adult students as long as they are cooperative with remaining in treatment. The DTTN can provide: specialized academic instruction, therapeutic services (individual, group, parent counseling) and all other services outlined in the student’s IEP. The IEP team determined this placement is the best option at this time and is where the student will receive educational benefit and FAPE.

The SUHSD anticipates March 1, 2023, to be the date the student will return to the SUHSD.

**Demographic Information:** The SUHSD has a student population of 36,000 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 waivers similar to this waiver, allowing LEAs to waive relevant *EC* provisions for using special education funds for the placement of students at NPS sites that have not been certified by the CDE.

## Fiscal Analysis

If this waiver is approved, the SUHSD may utilize state and federal special education funds for the placement of this student at the DTTN. If this waiver is denied, the SUHSD may utilize only local funds to support the student’s placement at DTTN. The yearly cost for placement at DTTN for this student is $185,000.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** SUHSD Specific Waiver Request 8-5-2022 (2 pages) (Original waiver request is signed and on file in the CDE 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 8-5-2022 | Sweetwater Union High School District (SUHSD) | **Requested:**March 1, 2022 to March 21, 2023**Recommended:** March 1, 2022 to March 1, 2023 | To waive NPS certification to allow the SUHSD to use state and federal special education funds for the placement of a student in an uncertified NPS | Approval based on fulfillment of conditions CDE would have recommended for the period the student is placed at the uncertified NPS | June 14, 2021 | The SUHSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

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