

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education November 2023 Agenda Item #W-12

## Subject

Request by the **Scotts Valley Unified School District** (**SVUSD) and the North Santa Cruz Special Education Local Plan Area (NSCSELPA)** 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 Melmark School, an uncertified non-public school for students with disabilities with a residential treatment center, in Berwyn, Pennsylvania.

## Waiver Number

7-4-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The SVUSD (the District) and the NSCSELPA (SELPA) are seeking a renewal 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 (Student) at the Melmark School, an uncertified private school for students with disabilities with a residential treatment center (RTC), in Berwyn, Pennsylvania.

The SVUSD stated that the Student began attending Melmark School in November 2021. In January, 2022, the District applied for a waiver to fund the Student’s attendance at Melmark for the period of November 2021 through June 2023, which was approved by the State Board of Education (SBE) during the May 2022 meeting. (Waiver #1-1-2022-W-06.)

The District stated in this renewal waiver that they have actively explored alternative placement options for the Student since December 2020; first at in-state nonpublic schools (NPSs), and then at an out-of-state California Department of Education (CDE) certified NPS. On June 3, 2021, the District offered the Student placement in a residential treatment center, while waiting for acceptance by a CDE certified program. The Student remained at their then current placement, the Norris Academy, as a private pay student until they were accepted by the Melmark School and placed there mid-November 2021. The District stated that there are very few residential treatment centers that work with nonverbal students who have autism, intellectual disabilities, and severe behaviors. At the time of Student’s placement, the individualized education program (IEP) team agreed the Melmark School, an uncertified school, is able to meet the Student’s comprehensive and unique needs which will provide the student with a FAPE.

The District stated that the Melmark School is able to provide the student with 24/7 education and care based on Applied Behavioral Analysis (ABA) best practices, which the Student has received there since November 10, 2021. The Student continues to require 24/7 education and care, but the District has been unable to move the student to an alternative CDE-certified placement due to the lack of available certified placements.

This placement continues to meet the Students needs and services to provide a free and appropriate public education (FAPE). Melmark School provides integrated services, which meet the Students speech therapy and augmentative communication needs. Additionally, smaller class sizes, residential facilities and onsite nursing facilities meet the students social and medical needs. Through continuous meetings the District has noted the student is progressing towards their academic goals.

The CDE has verified, that since approval of the initial waiver, the District has complied with all required terms of monitoring and searched actively for possible placement in a CDE-certified residential treatment center. Per the District, because no CDE-certified residential treatment center has accepted the student, and Melmark School continues to be appropriate for the Student, the District is requesting a renewal waiver.

The District is requesting a waiver for the period of July 1, 2023 to June 30, 2024.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE Education 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 Program (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 CDE ensured 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 SVUSD 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 period the student is placed at the Melmark School, July 1, 2023, through June 30, 2024. This recommendation of approval is contingent upon the following conditions:

* The SVUSD will consult and coordinate with the NSCSELPA and the North Santa Cruz SELPA Office of Education 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 COVID-related travel restrictions.
  + After each onsite visit the SVUSD 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 SVUSD will consult with the Melmark School 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 SVUSD 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 SVUSD 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 SVUSD meets the conditions of the waiver.

## Summary of Key Issues

The District stated that due to severe reactive behaviors, the Student has historically been served via settlement agreements in a privately operated 1:1 ABA based educational program. The Student’s special education eligibility category is identified as Autism with a secondary eligibility of Speech Language Impairment. All appropriate CDE certified options have either rejected the Student, or notified the District that they could not consider taking students off their waitlists until 2022. Because of the Student’s unique needs, Melmark, although uncertified, has been the only school located that can meet student's needs and was willing to accept her placement since 2021.

The District stated that given the Student’s slow rate of progress, the LEA anticipates that the Student will require a long-term placement of 20-24 additional months at the Melmark School. The student was initially placed at Melmark in mid-November 2021 and is not yet ready to transition to any less restrictive setting. The individualized education program (IEP) team, which includes the educational rights holder, agrees that the Melmark School, an uncertified school, is the most appropriate placement to meet the student’s unique needs. If progress is substantial, the Student's anticipated return date would be June 1, 2025.

If the SBE approves the waiver, the SVUSD will be able to use state and federal special education funds for the placement of this student at the Melmark School for the period requested.

**Demographic Information:** The SVUSD has a student population of 2,644 and is located in a suburban area in Santa Cruz County.

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

Since the September 2019 SBE meeting, excluding this waiver submission, the SBE has received and 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 (as appropriate)

If this waiver is approved, the SVUSD may utilize state and federal special education funds for the placement of this student at Melmark School. If this waiver is denied, the SVUSD may utilize only local funds to support the student’s placement at Melmark School. The yearly cost for placement at Melmark School for this student is $472,440.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Scotts Valley Unified School District Specific Waiver Request Waiver 7-4-2023 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-4-2023 | Scotts Valley Unified School District (SVUSD) | **Requested:** July 1, 2023, to June 30, 2024  **Recommended:** July 1, 2023, to June 30, 2024 | To waive NPS certification to allow the SVUSD 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 | April 12, 2023 | The SVUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | Yes,  Waiver  #1-1-2022 |

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# Attachment 2: Scotts Valley Unified School District Specific Waiver Request Waiver 7-4-2023

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4475432

Waiver Number: 7-4-2023

Active Year: 2023

Date In: 4/14/2023 12:21:07 PM

Local Education Agency: Scotts Valley Unified

Address: 108 Whispering Pines Dr., Ste. 115

Scotts Valley, CA 95066

Start: 7/1/2023

End: 6/30/2024

Waiver Renewal: Yes

Previous Waiver Number: 1-1-2022-W-06

Previous SBE Approval Date: 5/18/2022

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: Request to waive California *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 by California, out-of-state school for students with disabilities located in Berwyn, Pennsylvania.

Outcome Rationale: The 9th grade student with disabilities has unique educational needs that require intensive 24/7 support in a residential treatment center that is able to address her autism, intellectual disability, communication deficits, and severe aggressive behaviors. This is a renewal application. She was originally placed in Melmark in November 2021. Prior to placement at Melmark and again throughout the waiver period, the District sought placement at all California-certified placements that were able to meet the student's needs, but no California-certified placement accepted her, or was able to offer her admission given space and staffing constraints. The selected school, Melmark, is able to meet her needs and is licensed or certified by multiple other states.

Student Population: 2169

City Type: Suburban

Local Board Approval Date: 4/12/2023

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Amy Churchill

Position: Director of Special Education

E-mail: [achurchill@scottsvalleyusd.org](mailto:achurchill@scottsvalleyusd.org)

Telephone: 831-438-1820 x123