

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education May 2021 Agenda Item #W-08

## Subject

Request by the **Antelope Valley Union High School District and the Antelope Valley Special Education Local Plan Area** to waive California *Education Code* 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 Canton, Massachusetts.

## Waiver Number

2-2-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Antelope Valley Union High School District (AVUHSD) and the Antelope Valley Special Education Local Plan Area (SELPA) request to waive California *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 Judge Rotenberg Educational Center (JREC) an uncertified school for students with disabilities with a residential treatment center (RTC), in Canton, Massachusetts. The JREC is currently not certified by the California Department of Education (CDE) as a certified nonpublic school (NPS).

The LEA and the SELPA have not requested a child specific NPS certification waiver, previously, for this student. Prior to the placement of the student at the JREC, the AVUHSD 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. The student, whose special education eligibility category is identified as emotional disturbance, was denied admission to 38 certified NPSs with an RTC component. The facilities could not ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE).

The individualized education program (IEP) team agreed the JREC, an uncertified school and RTC, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE.

## 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 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 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 with conditions that are specific to the waiver.

## Recommendation

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

The AVUHSD and the SELPA submitted all required documents as part of the waiver submission process. The CDE recommends approval of this waiver, with conditions, for the period the student is placed at the JREC, from February 9, 2021, through February 8, 2022. This recommendation for approval is contingent upon the following conditions:

* The AVUHSD will consult and coordinate with the SELPA 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 onsite 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.
  + After each onsite visit, or real-time virtual consultation, as applicable, the AVUHSD shall provide written reports to the CDE Special Education Division (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 AVUHSD will consult with the JREC liaison monthly to monitor the provision of services and review the student’s progress using email, phone calls, and/or real-time virtual consultations, as well as the 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 AVUHSD will contact the student and the individual who legally holds the educational rights of the student, each month, to discuss progress and address any concerns.
* The AVUHSD 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 State Board of Education (SBE) to ensure the AVUHSD meets the conditions of the waiver.

## Summary of Key Issues

The AVUHSD is seeking placement for a high school student with a primary disability of emotional disturbance and secondary disability of other health impairment. This student demonstrates a variety of high-risk and dangerous behaviors including: significant   
self-injury necessitating hospitalizations and surgeries to remove foreign objects; elopement; physical aggression towards adult staff, drug-seeking/drug use; animal cruelty, and sexualized behaviors. The nature and degree of the student’s high-risk behaviors have escalated over the course of time. The student was placed at an in-state certified NPS on May 28, 2020; however, due to “(an) increase in frequency and severity of unsafe behaviors as well as the student’s vocalized disinterest in accepting support,” the NPS presented a 20-day prior written notice on October 7, 2020, in accordance with *EC* 56366(a)(4), terminating the placement and recommending a “higher level of care”. The NPS agreed to hold the student until a more suitable placement could be found.

The AVUHSD has contacted 7 in-state and 31 out-of-state California-certified placements that are identified as having the supports and services needed to provide the student with a FAPE. In addition, 14 other placements not certified by California were contacted. None of these placement options would accept the student and/or the facilities were not equipped to meet the student’s comprehensive needs. The only facility that has accepted this student for placement is the JREC, an uncertified, out-of-state placement in Canton, Massachusetts.

Upon interviewing staff and completing a virtual tour of the facility, it appears that the facility has a clearly articulated, positive behavior intervention program with multiple levels of support to address the intensive self-injurious and increasingly dangerous behaviors of the student. The IEP team agreed this placement is the only location where the student will receive educational benefit. Without an appropriate placement, the IEP team believes that the student's behaviors will lead to significant injury to others, to the student, continued suicide attempts, or even death.

The AVUHSD anticipates December 23, 2022, to be the date the student will return the AVUHSD. If the SBE approves the waiver the AVUHSD will be able to use state and federal special education funds for the placement of this student at the JREC for the period requested, February 9, 2021, to February 8, 2022.

**Demographic Information:** The AVUHSD has a student population of 22,563 and is located in a suburban area in Los Angeles County.

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

The SBE has previously approved placements at the JREC on five separate occasions: May 10, 2007 (3-2-2007-W-27), May 7, 2009 (30-3-2009-W-24), May 12, 2011 (14-3-2011-W-22), and May 11, 2017 (40-12-2016-W-12), November 5, 2020 (10-6-2020-W-08)

Since the September 2018 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 10 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 AVUHSD may utilize state and federal special education funds for the placement of this student at the JREC. If this waiver is denied, the AVUHSD may utilize only local funds to support the student’s placement at the JREC. The yearly cost for the placement of the student at the JREC $465,743.65.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** AVUHSD Specific Waiver Request 2-2-2021 (4 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 Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-2-2021 | Antelope Valley Union High School District (AVUHSD) and the Antelope Valley Special Education Local Plan Area (SELPA) | **Requested:** February 9, 2021, to February 8, 2022  **Recommended:** February 9, 2021, to February 8, 2022 | To waive NPS certification to allow the AVUHSD and the SELPA to use state and federal special education funds for the placement of a student in an uncertified out-of-state residential school | Approval with conditions for the period the student is placed at the uncertified NPS | 2/24/2021 | The AVUHSD and the SELPA may not use state and federal special education funds for the placement of the student at the uncertified out-of-state residential school | None |

Created by California Department of Education: March 2021

# Attachment 2: Antelope Valley Union High Specific Waiver Request 2-2-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964246

Waiver Number: 2-2-2021

Active Year: 2021

Date In: 2/11/2021 3:25:14 PM

Local Education Agency: Antelope Valley Union High

Address: 44811 N. Sierra Hwy.

Lancaster, CA 93534

Start: 2/9/2021

End: 2/8/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366(d)

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: The Antelope Valley Union High School District, within the Antelope Valley SELPA, is seeking placement for a high school student with a primary disability of Emotional Disturbance and secondary disability of Other Health Impairment. This student demonstrates a variety of high-risk and dangerous behaviors including: significant self-injury necessitating hospitalizations and surgeries to remove foreign objects; AWOL/elopement; physical aggression towards adult staff, drug-seeking/drug use; animal cruelty, and sexualized behaviors. The nature and degree of her high-risk behaviors have escalated over the course of the time she has been with our district. The student was placed at an in-state certified placement on May 28, 2020; however, due to “her increase in frequency and severity of unsafe behaviors as well as her vocalized disinterest in accepting support,” they presented a 20-day prior written notice on 10/07/2020, in accordance with California *Education Code* 56366(a)(4), terminating her placement and recommending a “higher level of care”. They did agree to hold her until a more suitable placement could be found.

AVUHSD has contacted multiple 7 in-state and 31 out-of-state CDE-approved placements that are identified as having the supports and services needed to provide the student with a free and appropriate public education (FAPE). In addition, 14 other non-CDA-Approved placements were contacted. None of these placement options would accept the student and/or the facilities identified that they were not equipped to meet the student’s comprehensive needs. The only facility that has accepted this student for placement is Judge Rotenberg Educational Center, an uncertified, out-of-state placement in Canton, Massachusetts.

Upon interviewing staff and completing a virtual tour of the facility, it appears that the facility has a clearly articulated, positive behavior intervention program with multiple levels of support to address the intensive self-injurious and increasingly dangerous behaviors of the student. The IEP team feels this placement is the only location at this time where the student will receive educational benefit. Without an appropriate placement, the IEP team believes that the student's behaviors will lead to significant injury to others, to the student, continued suicide attempts, or even death.

Outcome Rationale: Student has a history of foster placement for a period of time, then resided with her father for 2 years before custody and parent rights were removed. Student was returned to mother in November 2016. Since that time, student was placed in multiple probation placements until she was released March 30, 2020. While under probation, she was placed within the Juvenile Hall setting, a court approved alternative plan placement, and then a level 14 facility in California. Several psychiatric hospitalizations for significant self-injury resulted in loss of bed/or change of placement during that period. Also during that time, student received specialized academic instruction through her IEP and was receiving treatment substance abuse treatment and mental health treatment. She refused to participate in school, awol’d multiple times, engaged in drug use, and was reportedly sexually assaulted. During the period between 11/2016 and 03/2020, she was psychiatrically hospitalized over 11 times due to suicidal ideation, significant self-injury requiring medical intervention and/or surgery, and drug overdose. Each stay averaging about a week or more.

She was released from a level 14 RTC placement through probation to mother on 3/30/2020 and enrolled with the AVUHSD 04/06/2020. The level 14 facility’s clinician provided a letter on 04/09/2020 recommending a higher level of care as student was not successful in this highly restrictive setting.

Student enrolled in our district’s special education alternative campus for students with social-emotional and behavioral challenges and an assessment plan was provided at parent request to assess for possible residential treatment. During student’s time at the district’s alternative campus student was unsuccessful and refused to participate. She ran away from home twice then was psychiatrically hospitalized for suicidal ideation, attempted self-harm, and significant dysregulation (4/28/2020). The psychiatric team agreed to admit her to the pediatric psychiatric ward and began seeking a long-term treatment facility, ultimately sending out, and being refused placement at 20 different facilities.

The IEP met on 5/28/2020 to review assessment results and team agreed that Non-Public School placement within a Residential Treatment Center was the LRE to provide a FAPE. Due to the severity of student’s needs, district began reaching out to all CDE-approved facilities that met criteria for the student’s demographics (gender, age, grade, disability) both within and outside of California (7 in CA; 31 out of state). All but one facility declined student due to the severity and needs of student being beyond their ability to support. Some did suggest that if student was able to demonstrate prolong stability they may be willing to re-consider in the future.

Student was placed at the sole accepting facility, an in-state CDE approved facility on 05/30/2020. Since that time, her behavior has increased to include:

14 hospitalizations for significant self-injury, including multiple surgeries to remove foreign objects from her body;

7 AWOL’s, two in which she was gone for a prolonged overnight period, one in which she reported using drugs and having drugs on her person, and one of which student reports to being sexually assaulted; several additional instances of drug use; 1 drug overdose; assault to staff; 1 instance of cruelty to an animal, and sexualized behaviors. In October, the RTC team provided a prior written notice to terminate their contract and recommending need for higher level of care. The 10/22/2020 IEP team reviewed student’s needs and agreed that a higher level of care in an out-of-state NPS/RTC was the LRE for student to receive FAPE.

The district reviewed CDE-approved placement options and reached out to placements that had indicated they had a history of dealing with more intensive mental health needs or may be willing to reconsider student in the future. Those that had refused student in April/May due to not being able to meet the intensity of student need were not re-contacted. All contacted placements again refused placement. District reached out to other SELPAs and requested recommendations from them and the facilities that declined acceptance. An additional 14 placements were contacted to see if they may be appropriate to meet student’s educational needs. JR*EC* was the only facility to offer acceptance. They provided documentation indicating the ability to meet student’s needs, interviews and a virtual tour was scheduled, and consent from parent, school district board, and IEP team were obtained to move forward with placement.

Student Population: 280

City Type: Suburban

Local Board Approval Date: 2/24/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Tracy Spitz

Position: ERICS Program Administrator

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