

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education September 2021 Agenda Item #W-15

## Subject

Request by the **San Diego Unified School District** 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 two students with disabilities at an uncertified out-of-state school for students with disabilities located in Victoria, Texas.

## Waiver Number

23-12-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

The San Diego Unified School District (SDUSD) requests 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 adult student with a disability of autism (Student One) and one middle school student with an emotional disturbance disability (Student Two) at the Devereux, Victoria (DV), an uncertified school for students with disabilities with a residential treatment center (RTC), in Victoria, Texas.

The local educational agency (LEA) has not requested a student-specific nonpublic school (NPS) certification waiver, previously, for either student. Both students were attending the DV prior to December 3, 2020, when the LEA received a suspension notification for the DV from the California Department of Education (CDE). The CDE suspension allowed the students already in placement to remain through December 31, 2020. The SDUSD submitted a student-specific NPS certification waiver to request the students be allowed to remain past the December 31, 2020, deadline due to the detrimental effects an immediate move would cause for each of the students.

### Student One

The individualized education program (IEP) team determined a move from the current placement would be detrimental to Student One as the student was making significant progress in treatment at the DV. Student One’s disability is on the autism spectrum, and change is difficult for the student. The placement at the DV was the only placement which accepted the student based on the student’s age, needs, and challenges. Student One had been placed at DV for over two years. Student One and their family had been able to establish trust with treatment providers in the RTC program at the DV which resulted in positive gains for the student. The IEP team determined moving Student One to a different placement at that time would set back the positive gains achieved to date. The student’s parents have also expressed concerns related to potential exposure to COVID-19 if movement were to occur during the pandemic.

The IEP team agreed the DV, an uncertified school and RTC not certified by California (CA) was able to meet Student One’s comprehensive and unique needs which would provide them with a free appropriate public education (FAPE). The student had remained placed in the DV program since December 31, 2020. The IEP team had determined that the student progressed sufficiently that the student will return to placement within the SDUSD beginning the 2021–22 school year. The student returned to the SDUSD on August 24, 2021.

### Student Two

The IEP team for Student Two determined it would be detrimental to move the student from their current placement at the DV. Student Two had a one-to-one aide and was undergoing medication changes. The student’s high-risk behaviors, including impulsive behaviors, physical aggression, and elopement caused the prior in-state placement to terminate the student’s placement which resulted in the student being placed at the DV. Recent medication changes increased the student’s impulsive and unsafe behaviors, and additional medication changes were in process to stabilize the student. The IEP team determined that changing the student’s placement prior to stabilization would be harmful to the student. The IEP team created a plan to move Student Two to a local facility in San Diego, CA after the student was stabilized and the one-to-one aide was removed. Completion of the treatment regimen at the DV would allow the student to safely transfer to the local placement in San Diego, CA. Student Two had also been placed at DV for over two years. The parents of Student Two have also expressed concerns related to a potential exposure to COVID-19 if a placement change occurs during the pandemic.

However, the IEP team, working together with the parents, agreed that the student could receive FAPE at the Devereux League City (DLC) campus with the closure of the program at DV. On January 25, 2021, the student was moved to the DLC, a certified school and RTC which is able to meet Student Two’s comprehensive and unique needs which will provide the student with FAPE. The student has remained placed in the DLC program since January 25, 2021.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the least restrictive environment (LRE). The 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 CA 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 CA 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 CA NPS, and to use federal and state special education funds to finance the placement. In order for an out of state NPS to receive a CA student using federal and state special education funds to finance the placement, the out of state NPS must be certified by both the state in which it is located and by the state of CA.

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.

**Authority for Waiver**

*California Education Code (EC)* Section 56101

## Recommendation

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

The CDE recommends approval of the waiver for the period student two remained at the DV prior to their placement at the DLC, January 1, 2021, to January 25, 2021 and that student one remained at DV prior to placement back at the SDUSD, January 1, 2021 to August 24, 2021. The CDE’s recommendation is based upon the fact that when the SDUSD became aware of the suspension of the DV’s certification by both the TEA and the CDE, they took prompt action to find a new placement for student two while still engaging the parents and IEP team in meaningful dialog and that the SDUSD worked closely with the parents to find an appropriate placement for student one back in the SDUSD.

## Summary of Key Issues

The SDUSD has not previously requested a waiver for the placement of either of the two students in an uncertified NPS. The requested period for this waiver submission is January 1, 2021, to December 31, 2021.

Both students were attending the DV prior to December 3, 2020, when the SDUSD received a suspension notification from the CDE for the DV. The suspension allowed the students already in placement to remain at DV through December 31, 2020. The SDUSD submitted the NPS certification waiver on December 23, 2020, to request the students be allowed to remain at the DV until an appropriate placement could be found for each student, in order to provide sufficient time to secure meaningful parent input for completing the required paperwork to transfer the student two from the DV to the DLC, a CA-certified NPS and RTC and student one back to the SDUSD.

The SDUSD took prompt action to find a new placement for the students while still taking the time to obtain meaningful input from the parent and the IEP team. This led to the student two continuing to be placed at the DV until January 25, 2021, approximately four weeks after the certification was suspended by the CDE and student one continuing to be placed at the DV until August 24, 2021. The TEA declined to reapprove the DV to provide special education and related services during its certification renewal process. The CDE also denied the DV’s recertification as they were no longer certified by their own state which is a requirement for CA NPS certification. Though both the TEA and CDE denied recertification of the DV, the CDE is recommending approval of the waiver because of the prompt actions taken by the SDUSD in finding a new CA-certified placement to provide the students with a FAPE.

If the SBE approves the waiver the SDUSD will be able to use state and federal special education funds for the placements of these students at the DV for the periods the students remained at the DV.

**Demographic Information:** The SDUSD has a student population of 122,916 and is located in an urban area in San Diego County.

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

Since the September 2018 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 19 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 SDUSD may utilize state and federal special education funds for the placement of the students at the DV. If this waiver is denied, the SDUSD may utilize only local funds to support the students’ placements at the DV. The SDUSD did not provide the CDE with information about the yearly cost for the placements of the students at the DV.

## Attachment(s)

**Attachment 1:** Summary Table (1 page)

**Attachment 2:** SDUSD Specific Waiver Request 23-12-2020 (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 Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 23-12-2020 | San Diego Unified School District (SDUSD) | **Requested: Student One:** January 1, 2021, to August 24, 2021  **Student Two:** January 1, 2021, to January 25, 2021  **Recommended: Student One:** January 1, 2021, to August 24, 2021  **Student Two:** January 1, 2021, to January 25, 2021 | To waive NPS certification to allow the SDUSD to use state and federal special education funds for the placement of two students in an uncertified NPS | Approval | The SDUSD’s local board approved the student’s placement at the uncertified NPS on 6/23/2020 | The SDUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

Created by California Department of Education, March 2021

# Attachment 2: San Diego Unified School District Specific Waiver Request 23-12-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768338

Waiver Number: 23-12-2020

Active Year: 2020

Date In: 12/28/2020 2:55:24 PM

Local Education Agency: San Diego Unified

Address: 4100 Normal St.

San Diego, CA 92103

Start: 1/1/2021

End: 12/31/2021

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: 56366.1(a)

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: Devereux Victoria lost their state certification. Two students are currently placed at the site. A move from the current placement would be detrimental to the first student. Client is currently making progress emotionally in treatment. The student is on the autism spectrum and change is incredibly difficult for the student. This is the only placement that accepted the 20 year old student based on age, needs and the challenges of the student. Family and student have only truly been able to fully trust treatment providers in the program. A move would set back all of the positive gains achieved to date. Great concerns have also been expressed by parents concerning potential exposure if movement were to occur during the pandemic.

A move from the current placement would also be detrimental for the second student. The student is currently on a 1:1 and in the midst of medication changes. High risk behaviors impulsive behaviors of physical aggression and running away resulted in the out of state placement after student was given notice from a local placement. Recent medication changes resulted in an increase of impulsive and unsafe behaviors. Medication changes to achieve stabilization are currently in process. Moving the student now would cause greater harm than good. A plan is in place to move the student to a local facility in San Diego once the stabilization occurs and the 1:1 is removed. Adverse responses are anticipated if the 11 year old student moves from the current location to another out of state placement instead of transitioning to a local facility as what has been told to the student. Parent has also expressed great concern about their child moving placements during this pandemic.

Student Population: 122916

City Type: Urban

Local Board Approval Date: 6/23/2020

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Yolanda Hiller

Position: Licensed Mental Health Clinician

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