

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of EducationJuly 2022 AgendaItem #W-10

## Subject

Request by the **Antelope Valley Union High School District (AVUHSD)** and the **Antelope Valley Special Education Local Plan Area (SELPA)** to waive California *Education Code* (*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 out-of-state school for students with disabilities located in League City, Texas.

## Waiver Number

11-3-2022

## 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 *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 Devereaux Texas Treatment Network (DTTN), an uncertified school for students with disabilities with a residential treatment center (RTC), in League City, Texas.

The AVUHSD and the Antelope Valley SELPA have 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 AVUHSD exhausted all district placement options before agreeing with educational rights holder and attorney that Free Appropriate Public Education (FAPE) would be met for the student by placement at DTTN. The student, whose special education eligibility category is identified as emotional disturbance with a secondary eligibility of other health impairment, was placed in a juvenile detention center twice prior to the individualized education program (IEP) team agreement for placement at DTTN. The IEP team agreed that DTTN, an uncertified school and RTC, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE. The student was placed in the DTTN program on May 2, 2019, in an IEP decision which included the student’s parent and attorney. The student has had 13 successive Individualized Education Plan's (IEP’s) since enrolling at DTTN, showing improvement both academically and social-emotionally. These IEP’s also document a continued need for the extensive support provided at DTTN.

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

The AVUHSD and the Antelope Valley 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 DTTN, January 1, 2022, through December 31, 2022. This recommendation for approval is contingent upon the following conditions:

* The AVUHSD will consult and coordinate with the Antelope Valley SELPA and the Los Angeles County Office of Education to review the student’s placement through either an on-site visit to the school or a real-time virtual consultation, 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.
	+ 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 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, 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 has not previously requested a waiver for the placement of the student in an uncertified private school. The recommended period for this waiver submission is January 1, 2022, to December 31, 2022.

Prior to this student’s placement at the DTTN the student attended a certified, in-state public learning center. Due to the student’s significant mental and behavioral health needs, the student had great difficulty accessing the education provided at the previous placement, which resulted in an IEP team agreement with parent and attorney to place at the DTTN. Specifically, the student’s extreme physical aggression, including throwing school books across the room, eloping from school, self-injurious behavior such as banging of student’s head against the wall and taking pills obtained from home in view of school staff, physical assault of family on school property, physical assault of staff and sheriff, and work refusal, prohibited student from accessing FAPE. The student was detained and placed in juvenile hall twice due to physical aggression in the home, and received instruction and related services through a juvenile courts school twice. Upon discharge, the parent refused placement at the Learning Center and began home hospital. The 05/02/19 IEP team, including the student’s parent and attorney, discussed less restrictive environments and placements, and IEP team agreed that DTTN would provide the most secure and structured placement for the student. Additionally, the facility design of other sites that were considered lacked the required security which is needed to prevent the student’s elopement. As such, other facilities could not ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE). The DTTN accepted the student into their program and has been able to meet the student’s needs.

The AVUHSD has monitored the student’s progress and reports the student has been increasingly successful academically and socially, while still requiring extensive support at the DTTN. The DTTN administrator has also reported the student is responding well, both academically and therapeutically, at the DTTN. The IEP team believes the student requires the continued placement and treatment interventions to continue to progress. They agree the DTTN continues to be the most appropriate placement for the student.The AVUHSD anticipates December 31, 2022, to be the date the student will return to 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 DTTN for the period requested.

**Demographic Information:** The AVUHSD has a student population of 23,040 (Dataquest 2021-22) and is located in a suburban area in Los Angeles 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 26 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 California Department of Education.

## 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 DTTN. If this waiver is denied, the AVUHSD may utilize only local funds to support the student’s placement at the DTTN.

The yearly cost for placement at the DTTN for this student is $193,317.70.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** AVUHSD Specific Waiver Request 11-3-2022 (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 Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 11-3-2022 | Antelope Valley Union High School District (AVUHSD) and the Antelope Valley Special Education Local Plan Area (SELPA) | **Requested:**January 1, 2022 to December 31, 2022**Recommended: January** 1, 2022 to December 31, 2022  | To waive NPS certification to allow the AVUHSD and the Antelope Valley SELPA to use state and federal special education funds for the placement of a student in an uncertified school | Approval with conditions for the period the student is placed at the uncertified school | 02/16/2022 | The AVUHSD and the Antelope Valley SELPA may not use state and federal special education funds for the placement of the student at the uncertified school | None |

Created by California Department of Education: July 2022

# Attachment 2: Waiver 11-3-2022 Antelope Valley Union High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964246

Waiver Number: 11-3-2022

Active Year: 2022

Date In: 3/10/2022 3:19:59 PM

Local Education Agency: Antelope Valley Union High

Address: 176 Holston Dr.

Lancaster, CA 93535

Start: 1/1/2022

End: 12/31/2022

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: 56366.1(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: The Antelope Valley Union High School District, within the Antelope Valley SELPA, is requesting to maintain placement at Devereux Behavioral Health League City for a high school student with a primary disability of Emotional Disturbance and secondary disability of Other Health Impairment. This student has a longitudinal and current history of dangerous, aggressive, and high-risk behaviors. These include self-harm and suicidal ideation resulting in multiple hospitalizations; property destruction; physical assault of family members (grandfather/guardian, aunt, brother), including with the use of a knife; physical assault to staff members, resulting in significant bodily injury; physical assault to a police officers (multiple occasions); physical assault to a disabled student resulting in significant bodily injury; and repeated elopement behavior including hitchhiking out of town during AWOL from this secure facility.

Student Population: 44

City Type: Suburban

Local Board Approval Date: 2/16/2022

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Tracy Spitz

Position: ERICS Program Administrator

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