

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education July 2022 Agenda Item #W-11

## Subject

Request by **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 Canton, Massachusetts.

## Waiver Number

9-3-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The AVUHSD and the Antelope Valley Special Education Local Plan (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 AVUHSD and the Antelope Valley SELPA has requested and been granted a prior child specific nonpublic school (NPS) certification waiver, 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 and with a secondary diagnosis of other health impairment, was denied admission to 37 certified and non-certified schools due to the program and facility design. In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s extreme mental health needs accompanied by behaviors that include self-harm, substance abuse, and violence. Additionally, the facility design of each site lacked the required security which is needed to prevent the student’s elopement. As such, 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. The student has been meeting progress towards all IEP goals, and this was reflected in the most recent IEP. The student is on track to graduate by the end of September 2022. The student was placed in the JREC program on February 9, 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). 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 of February 9, 2022, through September 30, 2022. This recommendation for approval is contingent upon the following conditions:

* The AVUHSD will consult and coordinate with the Antelope Valley SELPA and the Kings 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 on-site 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 on-site 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 has previously requested and been given a waiver for the placement of the student in an uncertified private school. That waiver was 2-2-2021 and was approved by the State Board of Education (SBE) on May 12, 2021 for the period of February 9, 2021 to February 8, 2022. The recommended period for this waiver submission is February 9, 2022 to September 30, 2022.

Prior to this student’s placement at JREC the student attended certified nonpublic school sites. Due to the student’s significant mental and behavioral health needs, the student had great difficulty accessing the education provided at the previous placements. Specifically, the student demonstrated physically and sexually assaultive behaviors, threatened sexual assault against others, and has a significant history for self-harm and suicide attempts. The nature and seriousness of the students’ behaviors resulted in increased safety concerns. After exhausting all district placement options, the AVUHSD contacted 7 in-state and 31 out-of-state certified NPSs with RTCs to provide a FAPE to the student. These certified NPSs denied admission due to concerns about their ability to accommodate a student with significant mental and behavioral health needs, and the facilities were unable to ensure the health, safety, and welfare of the student due to the program and facility design. The IEP team, which included the educational rights holder, agreed the JREC, an uncertified school and RTC in Canton, Massachusetts, is the most appropriate placement to meet the student’s unique needs. The JREC 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 successful at the JREC. The JREC administrator has also reported the student is responding well, both academically and therapeutically, at the JREC. The IEP team believes the student requires the continued placement and treatment interventions to continue to progress. They agree the JREC continues to be the most appropriate placement for the student.The AVUHSD anticipates September 30, 2022, to be the date the student will graduate with a diploma.

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.

**Demographic Information:** The AVUHSD has a student population of 23,040 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 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 placement at the JREC for this student is $345,462.70.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** AVUHSD Specific Waiver Request 9-3-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-3-2022 | Antelope Valley Union School District (AVUHSD) and the Antelope Valley Special Education Local Plan (SELPA) | **Requested:** February 9, 2022- September 30, 2022  **Recommended:**  February 9, 2022- September 30, 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 NPS | 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 9-3-2022Antelope Valley Union High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964246

Waiver Number: 9-3-2022

Active Year: 2022

Date In: 3/8/2022 1:33:15 PM

Local Education Agency: Antelope Valley Union High School District

Address: 44811 N. Sierra Hwy.

Lancaster, CA 93534

Start: 2/9/2022

End: 9/30/2022

Waiver Renewal: Y

Previous Waiver Number: 2-2-2021-W-08

Previous SBE Approval Date: 6/3/2021

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 seeking to renew the waiver for a high school student with a primary disability of Emotional Disturbance and secondary disability of Other Health Impairment at Judge Rotenberg Educational Center, an uncertified, out-of-state placement in Canton, Massachusetts. This student has a significant history of 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 but have been well managed within her current setting at the non-CDE-approved Judge Rotenberg Center. The student was placed at Judge Rotenberg Center on February 9, 2021. The adult student has requested to remain at Judge Rotenberg Center until she completes her graduation requirements (by September 2022). The student reports that she feels she has been the most successful in her current placement than she has ever been. She is completing graduation requirements, maintaining safety, and has a variety of transition activities in place to assist with her post-secondary transition. She is concerned that a change in placement this close to graduation would be too disruptive to her educational program. She has requested to complete her remaining courses within her current setting. The 12/14/2021 IEP Team was in agreement, noting the following: “Given (Student)’s progress, age, and time until graduation, (District) feels a change at this time may be too disruptive for (Student) and may result in set-backs and further academic delays. (Student) is on track to graduate by the end of August 2022, just before her 19th birthday as a second-year senior via AB167 graduation requirements.”

Student Population: 23,041

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: ERIC

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