

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education July 2024 Agenda Item #W-06

## Subject

Request by the **San Pasqual Valley Unified School District** 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 middle school student with disabilities at the Menta Academy Non-Residential Treatment Center (Menta Academy), an uncertified nonpublic school for students with disabilities with a full-day treatment center, in Yuma, Arizona.

## Waiver Number

5-12-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The San Pasqual Valley Unified School District (SPVUSD) is seeking a 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 placement of one high school student with disabilities at the Menta Academy, an uncertified nonpublic school for students with disabilities with a full-day treatment center (FDTC), in Yuma, Arizona.

The SPVUSD has not requested a child specific NPS certification waiver, previously, for this student. Prior to the placement of the student at the Menta Academy, SPVUSD exhausted all district placement options before contacting five in-state and out-of-state NPS’ having FDTCs to find a suitable placement for the student. Multiple certified and non-certified facilities within and outside of California were contacted. All of these facilities have either declined the application or do not have the services necessary for the student to receive a free and appropriate public education (FAPE). In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s demonstrated neurological and developmental mental concerns. Therefore, the IEP team concluded that due to the student’s behavior issues, non-residential placement was deemed to be the least restrictive environment (LRE) to provide FAPE.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the 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 SPVUSD 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 time period the student is placed at the Menta Academy, November 29, 2023 through November 29, 2024. This recommendation of approval is contingent upon the following conditions:

* The SPVUSD will 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 SPVUSD 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 SPVUSD will consult with the Menta Academy 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 SPSVUSD 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 SPVUSD 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 CDE SED will monitor the conditions established by the State Board of Education (SBE) to ensure the SPVUSD meets the conditions of the waiver.

## Summary of Key Issues

The SPVUSD is a public school district situated on the borders of Arizona and Mexico, two miles from Yuma, Arizona, and eight miles from Algodones, Mexico. The SPVUSD indicated it reached out to five in-state and out-of-state NPSs; only the Menta Academy, located in Yuma, Arizona, had the services available to meet the student’s high level of needs as close to home as possible. This was determined upon researching and virtually touring the facility. Menta Academy is within 5 minutes from the student’s community and provides the support to address the student's extreme needs. The SPVUSD IEP team indicates this placement is the best location at this time where the student will receive educational benefit and FAPE. Without an appropriate placement, the IEP team believes that the student's unsafe behavior will continue and increase.

The SPVUSD anticipates November 29, 2024, to be the date the student will return to the SPVUSD.

**Demographic Information:** The SPVUSD has a student population of 591 and is located in a rural area in Imperial 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

If this waiver is approved, the SPVUSD may utilize state and federal special education funds for the placement of this student at the Menta Academy. If this waiver is denied, the SPVUSD may utilize only local funds to support the student’s placement at Menta Academy. The yearly cost for placement at Menta Academy for this student is $71,145.00

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** San Pasqual Valley Unified School District Specific Waiver Request 5-12-2023 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-12-2023 | San Pasqual Valley Unified School District (SPVUSD) | **Requested:** November 29, 2023, to November 29, 2024  **Recommended:** November 29, 2023, to November 29, 2024 | To waive NPS certification to allow the SPVUSD 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 | 10/10/2023 | The SPVUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

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