

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-07

## Subject

Request by the **Temecula 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 high school student with disabilities at the Kaizen Academy Residential Treatment Center, an uncertified nonpublic school for students with disabilities with a residential treatment center, in Payson, Utah.

## Waiver Number

4-9-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Temecula Valley Unified School District (TVUSD) is seeking 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 Kaizen Academy Residential Treatment Center (Kaizen Academy), an uncertified school for students with disabilities with a residential treatment center (RTC), in Payson, Utah.

The TVUSD has not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to placing the student at the Kaizen Academy, the TVUSD exhausted all district placement options before contacting 5 in state certified NPSs and 15 out-of-state certified NPSs with RTCs to provide a suitable placement for the student. All 20 facilities either declined the application or did 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 level of significant mental and behavioral health needs, including risk of self-harm and harm to others Also, each site's facility design lacked the required security needed to prevent the student from leaving the facility. Therefore, TVUSD IEP team found that the Kaizen Academy was the best placement to meet the student’s unique needs.

## 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 individualized education program (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 is 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 TVUSD 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 Kaizen Academy, September 5, 2023, through August 2024. This recommendation of approval is contingent upon the following conditions:

* The TVUSD 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 TVUSD 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 TVUSD will consult with the Kaizen 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 TVUSD 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 TVUSD 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 TVUSD meets the conditions of the waiver.

## Summary of Key Issues

The student’s previous placement was at Oxbow Academy, and Oxbow Academy gave a 20-day notice. The TVUSD reached out to 5 in-state and 15 out-of-state NPSs; only Kaizen Academy had the services available to meet the student’s high level of needs. This determination was after researching and virtually touring the facility. Additionally, Kaizen Academy provides the necessary support services for the significant mental and behavioral issues and the required security measures to prevent the student from leaving. The TVUSD IEP team feels this placement is the best location where the student will receive educational benefit and FAPE. Without an appropriate placement, the IEP team believes that the student's history of physical and assaultive behaviors will continue and increase. The TVUSD anticipates August 2024 to be the date the student will return to the TVUSD.

The CDE updated the attendance dates at Kaizen Academy as requested by TVUSD. Initially, TVUSD submitted dates from 9/5/2023 to 4/9/2024, but later clarified that the student would continue at Kaizen Academy until August 2024.

**Demographic Information:** The TVUSD has a student population of 26,545 and is located in a suburban area in Riverside 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 TVUSD may utilize state and federal special education funds for the placement of this student at the Kaizen Academy. If this waiver is denied, the TVUSD may utilize only local funds to support the student’s placement at Kaizen Academy. The yearly cost for placement at Kaizen academy for this student is $200,000.00

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Temecula Valley Unified School District Specific Waiver Request 4-9-2023 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 4-9-2023 | Temecula Valley Unified school Distirct (TVUSD) | **Requested:** September 5, 2023, to August 2024  **Recommended:** September 5 2023, to August 2024 | To waive NPS certification to allow the TVUSD 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 | 9/12/2023 | The TVUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

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