

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education September 2024 Agenda Item #W-11

## Subject

Request by the **Scotts 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 Melmark School Residential Treatment Center, an uncertified nonpublic school for students with disabilities with a residential treatment center, in Berwyn, Pennsylvania.

## Waiver Number

1-2-2024

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Scotts Valley Unified School District (SVUSD) is seeking a renewal 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 the placement of one high school student at the Melmark School Residential Treatment Center (Melmark School), an uncertified private school for students with disabilities with a residential treatment center (RTC) in Berwyn, Pennsylvania.

The SVUSD has previously applied for and been granted waivers to use special education funds for the placement of the student’s attendance at the Melmark School. The State Board of Education (SBE) approved waiver requests during the May 2022 and November 2023 meeting for the periods of November 2021 through June 30, 2023 and July 1, 2023 through June 30, 2024, respectively. (Waivers #1-1-2022-W-06; #7-4-2023-W-06.)

According to the SVUSD, the district has actively explored alternative placement options for the student since December 2020; first, at three in-state nonpublic schools (NPSs) and then at seven out-of-state California Department of Education (CDE) certified NPSs. On June 3, 2021, the SVUSD offered the student placement in a residential treatment center while waiting for acceptance by a CDE certified program. The student remained at their then current placement, the Norris Academy, as a private pay student until they were accepted by the Melmark School in mid-November 2021. The SVUSD stated that there are very few residential treatment centers that work with nonverbal students who have autism, intellectual disabilities, and severe behaviors. According to the district, at the time of student’s placement, the individualized education program (IEP) team agreed the Melmark School is able to meet the student’s comprehensive and unique needs and provide the student with a FAPE.

The SVUSD stated that the Melmark School is able to provide the student with 24/7 education and care based on Applied Behavioral Analysis (ABA) best practices, which the student has received there since November 10, 2021. The SVUSD stated that the student continues to require 24/7 education and care but the SVUSD has been unable to move the student to an alternative CDE-certified placement, due to the lack of available certified placements.

The SVUSD stated, and CDE has verified, that since approval of the initial waiver, the District has complied with all required terms of monitoring and searched actively for possible placement in a CDE-certified residential treatment center. Per the SVUSD, because no CDE-certified residential treatment center has accepted the student, and the Melmark School continues to be appropriate for the Student, the SVUSD is requesting a renewal waiver.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a free appropriate public education (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 individual educational plan (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 an NPS, 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 CDE ensured 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 SVUSD 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 Melmark School, from July 1, 2024, through June 30, 2025. This recommendation of approval is contingent upon the following conditions:

* The SVUSD 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 SVUSD 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 SVUSD will consult with the Melmark School 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 SVUSD 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 SVUSD 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 SBE to ensure the SVUSD meets the conditions of the waiver.

## Summary of Key Issues

The SVUSD stated that due to severe reactive behaviors, the student has historically been served via settlement agreements in a privately operated 1:1 ABA based educational program. In 2019, the SVUSD recommended placement at The Bay School, an ABA-based NPS in Santa Cruz, but the student’s parents declined that placement and The Bay School itself ultimately rescinded the student's acceptance, believing the student’s behaviors were too severe for the Bay School setting. The student continued to participate in a 1:1 home program. Because of the student’s unique needs, Melmark has been the only school located that can meet student's needs and was willing to accept the student’s placement since 2021.

The SVUSD stated that given the student’s rate of progress, it anticipates that the student will require a long-term placement of 20-24 additional months at the Melmark School. The student was initially placed at the Melmark School in mid-November 2021 and is not yet ready to transition to any less restrictive setting. If progress is substantial, the student's anticipated return date would be June 1, 2025.

**Demographic Information:** The SVUSD has a student population of 2,694 and is located in a suburban area in Santa Cruz County.

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

Since the September 2019 State Board of Education 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 (as appropriate)

## If this waiver is approved, the SVUSD may utilize state and federal special education funds for the placement of this student at Melmark School. If this waiver is denied, the SVUSD may utilize only local funds to support the student’s placement at the Melmark School. The yearly cost for placement at the Melmark School for this student is $480,432.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Scotts Valley Unified School District Specific Waiver Request 1-2-2024 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-2-2024 | Scotts Valley Unified School District (SVUSD) | **Requested:** July 1, 2024, to June 30, 2025  **Recommended:** July 1, 2024, to June 30, 2025 | To waive *EC* NPS certification requirements to allow the SVUSD 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 | January 16, 2024 | The SVUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | Yes Waivers  #1-1-2022,  #7-4-2023 and  #1-1-2022 |

Created by California Department of Education

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# Attachment 2: Scotts Valley Unified School District Specific Waiver Request 1-2-2024

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4475432

Waiver Number: 1-2-2024

Active Year: 2024

Date In: 2/1/2024 1:55:11 PM

Local Education Agency: Scotts Valley Unified

Address: 108 Whispering Pines Dr., Ste. 115

Scotts Valley, CA 95066

Start: 7/1/2024

End: 6/30/2025

Waiver Renewal: Yes

Previous Waiver Number: 7-4-2023

Previous SBE Approval Date: 11/9/2023

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: Request to waive California *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 by California, out-of-state school for students with disabilities located in Berwyn, Pennsylvania.

Outcome Rationale: The 10th grade student with disabilities has unique educational needs that require intensive 24/7 support in a residential treatment center that is able to address their autism, intellectual disability, communication deficits, and severe aggressive behaviors. This is a renewal application. Student was originally placed in Melmark in November 2021.

District continues to seek placements at all California-certified placements that were able to meet the student's needs, but no California-certified placement accepted the student, or was able to offer admission given space and staffing constraints. The selected school, Melmark, is able to meet student needs and is licensed or certified by multiple other states.

Student Population: 2107

City Type: Suburban

Local Board Approval Date: 1/16/2024

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Amy Churchill

Position: Director of Special Education

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