

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education March 2025 Agenda Item #W-04

## Subject

Request by the **San Diego 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 Shrub Oak International School Residential Treatment Center, an uncertified nonpublic school for students with disabilities with a residential treatment center in Mohegan Lake, New York.

## Waiver Number

2-10-2024

## Type of Action

Action, Consent

## Summary of the Issue(s)

The San Diego Unified School District (SDUSD) 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 Shrub Oak International School Residential Treatment Center (Shrub Oak International School), an uncertified school for students with disabilities with a residential treatment center (RTC), in Mohegan Lake, New York.

The SDUSD has not requested a child-specific nonpublic school (NPS) certification waiver for this student previously. Prior to placing the student at the Shrub Oak International School, the SDUSD exhausted all district placement options before contacting eight in-state certified NPSs and 18 out-of-state certified NPSs with RTCs to provide a suitable placement for the student. All 26 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 comprehensive behavioral and educational needs due to a developmental disability. Therefore, the SDUSD individualized education program (IEP) team found that the Shrub Oak International School 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 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 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 SDUSD 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 Shrub Oak International School, from May 2024 through November 2025. This recommendation of approval is contingent upon the following conditions:

* The SDUSD 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 on-site visit, the SDUSD shall provide written reports to the CDE, 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 SDUSD will consult with the Shrub Oak International 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 SDUSD 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 SDUSD 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‘s SED will monitor the conditions established by the State Board of Education (SBE) to ensure the SDUSD meets the conditions of the waiver.

## Summary of Key Issues

The student was initially placed in a certified residential treatment program by the SDUSD; however, the parent withdrew the child from the facility, necessitating a second search for an appropriate placement. The SDUSD reached out to 26 NPSs. All 26 NPSs, including eight in-state certified NPSs and 18 out-of-state certified NPSs, either declined the application or did not have the services necessary for the student to receive FAPE. Shrub Oak International School was the only NPS that had the services available to meet the student’s comprehensive needs. This was determined after SDUSD researched and virtually toured the facility. Additionally, Shrub Oak International School provides the necessary support services for significant mental and behavioral issues. The SDUSD IEP team determined 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 aggression and psychiatric needs will continue and increase in intensity and frequency. The SDUSD anticipates November 2025 to be the date the student will return to the district.

**Demographic Information:** The SDUSD has a student population of 114,330 and is located in an urban area in San Diego 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 SDUSD may utilize state and federal special education funds for the placement of this student at the Shrub Oak International School. If this waiver is denied, the SDUSD may utilize only local funds to support the student’s placement at Shrub Oak International School. The yearly cost for placement at Shrub Oak International School for this student is $339,897.65

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** San Diego Unified School District SpecificWaiver Request 2-10-2024 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2/10/2024 | San Diego Unified School District (SDUSD) | **Requested:** May 7, 2024, to November 7, 2025  **Recommended:** May 7, 2024, to November 7, 2025 | To waive NPS certification to allow the SDUSD 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 | 6/25/2024 | The SDUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

Created by California Department of Education

March 2025

# Attachment 2: San Diego Unified School District Specific Waiver Request 2-10-2024

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768338

Waiver Number: 2-10-2024

Active Year: 2024

Date In: 10/4/2024 4:06:24 PM

Local Education Agency: San Diego Unified

Address: 4100 Normal St.

San Diego, CA 92103

Start: 5/7/2024

End: 11/7/2025

Waiver Renewal: No

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: 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 student has significant medical concerns along with a history of aggression and psychiatric needs that were given as the reason for the denial of the referral. The referral was sent to in and out of state treatment programs but was declined by over 25 programs.

Student Population: 94996

City Type: Urban

Local Board Approval Date: 6/25/2024

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Yolanda Hiller

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