

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education March 2023 Agenda Item #W-09

## Subject

Request by the Saddleback Valley Unified School District and South Orange County Special Education Local Plan Area 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 Devereux Texas Treatment Network, an uncertified nonpublic school for students with disabilities with a residential treatment center, in League City, Texas.

## Waiver Number

3-8-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Saddleback Valley Unified School District (SVUSD) and South Orange County Special Education Local Plan Area (South Orange County SELPA) 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 the placement of one middle school student with disabilities at the Devereux Texas Treatment Network (DTTN), an uncertified school for students with disabilities with a residential treatment center (RTC), in League City, Texas.

The SVUSD has not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to the placement of the student at the DTTN, the SVUSD 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. Multiple certified and non-certified facilities in California and out of state were contacted. All of the placements either do not have the services necessary for the student to receive a free and appropriate public education (FAPE) or there was a waiting list for the student to enroll. In each instance, per SVUSD, the facilities were not appropriate to address the student’s needs and/or did not have any projected openings. In addition, the student was diagnosed with highly acute mental health concerns. The SVUSD indicates the student was demonstrating behaviors that were harmful to self and others.

## 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 Individualized Education 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 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: Yes
* Approval with conditions: No
* 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, for the time period the student is placed at the DTTN, March 8, 2022 through March 8, 2023. The CDE recommends no conditions at this time since this waiver is retroactive and the student is no longer attending the out-of-state placement and has returned to a California school. The SVUSD met all the conditions met all the conditions that the CDE would have recommended as a condition of approval of the waiver, as described below:

* The SVUSD consulted and coordinated with the South Orange County SELPA to review the student’s placement through an on-site visit to the school and/or via real-time virtual consultations at least two times during the period of this waiver.
  + After each onsite visit the SVUSD and the South Orange County SELPA provided written reports to the CDE’s SED documenting the findings of the visit, or consultation. These reports were required to 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 and the South Orange County SELPA consulted with the DTTN 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 also included a review of program data. Program data included the progress on IEP goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.
* The SVUSD and the South Orange County SELPA contacted 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 and the South Orange County SELPA scheduled IEP meetings 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.

## Summary of Key Issues

The SVUSD states that the student was previously placed in a district specialized program that provided specialized academic instruction class with substantial behavior and therapeutic supports and with a 3:1 staff-to-student ratio and weekly individual and group counseling. It was determined by the IEP team that the program was not sufficient to meet the student’s needs.

Additionally, the IEP team determined a diagnostic placement at an RTC was the best option for the student to receive FAPE. Per the SVUSD, the selected residential facility offers a high level of monitoring for student safety needs and intensive therapeutic intervention to stabilize and support the emotional regulation of the student.

The DTTN has reviewed the student’s educational and psychological records and they have reported they are able to implement the student’s IEP. This facility specializes in treating students with emotional disabilities with co-occurring developmental and learning difficulties. DTTN can provide: specialized academic instruction, therapeutic services and all other services outlined in the student’s IEP. The IEP team determined that at this time, this placement is the best option for the student to receive educational benefit and FAPE.

The student is scheduled to return to the SVUSD on March 8, 2023

**Demographic Information:** The SVUSD has a student population of 24,390 and is located in an urban area in Orange 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 29 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 SVUSD may utilize state and federal special education funds for the placement of this student at the DTTN. If this waiver is denied, the SVUSD may utilize only local funds to support the student’s placement at Sandy Pines. The yearly cost for placement at DTTN for this student is $107,973.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** SVUSD Specific Waiver Request 3-8-2022 (4 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 3-8-2022 | Saddleback Valley Unified School District  (SVUSD) | **Requested:** March 8, 2022, to March 8, 2023  **Recommended:** March 8, 2022, to March 8, 2023 | To waive NPS certification to allow the SVUSD to use state and federal special education funds for the placement of a student in an uncertified NPS | Approval based on fulfillment of conditions CDE would have recommended for the period the student is placed at the uncertified NPS | April 7, 2022 | The SVUSD may not use state and federal special education funds for the placement of the student at the uncertified NPS | None |

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