

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education May 2021 Agenda Item #W-09

## Subject

Request by the **San Francisco Unified School District** to waive California *Education Code* 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 out-of-state school for students with disabilities located in Victoria, Texas.

## Waiver Number

24-12-2020

## Type of Action

Action, Consent

## Summary of the Issue(s)

The San Francisco Unified School District (SFUSD) requests to waive California (CA) *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 Devereux Victoria (DV), an uncertified school and residential treatment center (RTC) for students with disabilities located in Victoria, Texas.

The SFUSD has not requested a child-specific nonpublic school (NPS) certification waiver, previously, for the student. The student was attending the DV prior to when the SFUSD received a certification suspension notification for the DV from the CA Department of Education (CDE). The CDE had issued the suspension due to the Texas Education Agency (TEA) suspending certification for the DV. The CDE suspension allowed the students already in placement to remain through December 31, 2020. Upon notification, the SFUSD initiated referrals to move the student to a CA-certified NPS placement and secured an alternate placement for the student at the Devereux, League City (DLC), a CA-certified NPS and RTC. The placement at the DLC was approved by the educational rights holders, the student’s parents,on December 15, 2020. On December 18, 2020, the DLC notified the SFUSD that additional intake paperwork needing parent signatures was required prior to transferring the student from the DV to the DLC. The parents do not speak English, and have not shown the ability to read in either their native language or in English. Additionally, the parents do not have access to the technology devices required for securing electronic documents during a pandemic, including, but not limited to, printers and scanners. As such, all paperwork required a home visit with interpretation.

The SFUSD began to attempt to secure an interpreter to assist with garnering parent signatures on December 20, 2020. In order to ensure the paperwork was secured with meaningful parent input, the SFUSD submitted a child-specific waiver, not to exceed one month, due to the logistical limitations as a result of the COVID-19 pandemic and interpreter availability over the holidays. The SFUSD transitioned the student to the DLC on January 21, 2021.

## 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 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 CA 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 CA 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 CA 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 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 will recommend approval of the waiver with conditions that are specific to the waiver.

## Recommendation

* Approval: Yes
* Approval with conditions: No
* Denial: No

The CDE recommends approval of the waiver for the period the student remained at the DV prior to their placement at the DLC, January 1, 2021, to January 20, 2021. The CDE’s recommendation is based upon the fact that when the SFUSD became aware of the suspension of the DV’s certification by both the TEA and the CDE, they took prompt action to find a new placement for the student while still engaging the parents and IEP team in meaningful dialog.

## Summary of Key Issues

The SFUSD has not previously requested a waiver for the placement of the student in an uncertified private school. The recommended period for this waiver submission is January 1, 2021, to January 20, 2021.

The student was attending the DV when the SFUSD received a certification suspension notification from the CDE for the DV. The suspension allowed the students already in placement at the DV to remain through December 31, 2020. The SFUSD submitted the NPS certification waiver on December 30, 2020, to request the student be allowed to remain at the DV until January 31, 2021, in order to provide sufficient time to secure meaningful parent input for completing the required paperwork to transfer the student from the DV to the DLC, a CA-certified NPS and RTC.

The SFUSD took prompt action to find a new placement for the student while still taking the time to obtain meaningful input from the parent and the IEP team. This led to the student continuing to be placed at the DV until January 20, 2021, approximately three weeks after the certification was suspended by the CDE. The TEA declined to reapprove the DV to provide special education and related services during its certification renewal process. The CDE also denied the DV’s recertification as they were no longer certified by their own state which is a requirement for CA NPS certification. Though both the TEA and CDE denied recertification of the DV, the CDE is recommending approval of the waiver because of the prompt actions taken by the SFUSD in finding a new CA-certified placement to provide the student with a FAPE.

If the SBE approves the waiver, the SFUSD will be able to use state and federal special education funds for the placement of this student at the DV for the period the student remained at the DV prior to their placement at the DLC, January 1, 2021, to January 20, 2021.

**Demographic Information:** The SFUSD has a student population of 61,013 and is located in an urban area in San Francisco County.

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

Since the September 2018 State Board of Education meeting, excluding this waiver submission, the SBE has received and approved 10 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, SFUSD may utilize state and federal special education funds for the placement of this student at the DV for the recommended period, January 1, 2021, to January 20, 2021. If this waiver is denied, the SFUSD may utilize only local funds to support the student’s placement at DV. The yearly cost for placement at DV for this student is $186,480.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** SFUSD Specific Waiver Request 24-12-2020 (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 Recommended | Local Board Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 24-12-2020 | San Francisco Unified School District (SFUSD) | **Requested:** January 1, 2021 to January 31, 2021  **Recommended:** January 1, 2021 to January 20, 2021, the period the student remained placed in the uncertified NPS | To waive NPS certification to allow the SFUSD to use state and federal special education funds for the placement of a student in an uncertified NPS | Approval | 10/7/2020 | The SFUSD 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 2021

# Attachment 2: San Francisco Unified School District Specific Waiver Request 24-12-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3868478

Waiver Number: 24-12-2020

Active Year: 2020

Date In: 12/30/2020 12:30:10 PM

Local Education Agency: San Francisco Unified

Address: 3045 Santiago Street

San Francisco, CA 94116

Start: 1/1/2021

End: 1/31/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

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: California *Education Code* Section 56366(d): 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 residential treatment facility located in Victoria Texas and managed by Devereux Advanced Behavioral Health Texas has lost CDE certification. Immediately upon notification, SFUSD initiated referrals to move students to CDE approved placements. Student DF secured alternate placement in Devereux's League City residential treatment facility and was approved by the parents on December 15, 2020. On December 18th SFUSD was notified of additional intake paperwork required prior to transferring student from Victoria to League City needing parent signatures. Parents speak Tongan and have not shown ability to read Tongan or English. They have no access to printers, scanners for ease in securing electronic documents - all paperwork requires home visit with interpretation. Since December 20, 2020, SFUSD has been attempting to secure Tongan interpretation to assist with garnering parent signature. A copy of the paperwork has been mailed to the parents in the event an interpreter is secured 12/31/2020. SFUSD seeks a brief waiver not to exceed a month's time to ensure paperwork is secured with meaningful parent input and understanding the limitations presented with COVID-19 and interpretation availability over the holidays. SFUSD anticipates transitioning the youth as soon as possible but not later than January.

Student Population: 1

City Type: Small

Local Board Approval Date: 10/7/2020

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Kristen Devine

Position: Director, Special Education

E-mail: [devinek@sfusd.edu](file:///C:/Users/jburch/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/devinek@sfusd.edu)

Telephone: 415-905-0849

Fax: