

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education July 2022 Agenda Item #W-08

## Subject

Request by **San Diego Unified School District (SDUSD)** and the **San Diego Unified School District Special Education Local Plan Area (SDUSD SELPA)** to waive California *Education Code* (*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 middle/junior high school student with disabilities at an uncertified out-of-state school for students with disabilities located in League City, Texas.

## Waiver Number

4-1-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The SDUSD has previously requested a waiver for the placement of the student in an uncertified private school, Devereaux Victoria. The recommended period for this waiver submission is January 1, 2022, to August 29, 2022.

Prior to placement at the current setting, the student was attending Devereaux Victoria Non-Public School (NPS) until it closed. SDUSD transferred the student to Devereaux Texas Treatment Network (DTTN) per the Individualized Education Plan (IEP) team on January 25, 2021. A waiver is requested due to decertification of DTTN effective January 1, 2022. The student currently has a one-on-one aide due to safety needs related to elopement and aggressive behaviors; however, parent and IEP team are beginning to implement a fading plan. The student is showing progress towards most IEP goals, but is not currently meeting the majority of them due to continued struggles with self-regulation. There has been a marked improvement in social/emotional behaviors at school; however, student still struggles with aggression and regression behaviors towards staff and students in the non-academic settings. Student does recognize and want to improve behaviors, and has expressed a strong desire to return to a home setting when these behaviors are addressed and normalized. Although the student is still struggling in some areas (specifically around self-regulation and aggressive behaviors outside of the academic setting), the current placement has been the most stabilizing for the student. The student has demonstrated a desire to please and demonstrate academic competency and is better able to express feelings and attempts to self-regulate. Now that the student is experiencing success, a move now would result in a set-back in the positive progress recently made. The SDUSD has monitored the student’s progress and reports the student has been successful at the DTTN. The DTTN administrator has also reported the student is responding well, both academically and therapeutically, at the DTTN. The IEP team believes the student requires the continued placement and treatment interventions to continue to progress, with discussions currently taking place to discuss a transition plan back to SDUSD. They agree the DTTN continues to be the most appropriate placement for the student.The SDUSD anticipates August 29, 2022, to be the date the student will return to the SDUSD.

If the State Board of Education (SBE) approves the waiver the SDUSD will be able to use state and federal special education funds for the placement of this student at the DTTN for the period requested.

The IEP team agreed the DTTN, an uncertified school and resource treatment center (RTC), is able to meet the student’s comprehensive and unique needs which will provide the student with a free appropriate public education (FAPE). The student was placed in the DTTN program on January 25, 2021.

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

The SDUSD and the SDUSD SELPA submitted all required documents as part of the waiver submission process. The CDE recommends approval of this waiver, with conditions, for the period the student is placed at the DTTN, January 1, 2022, through August 29, 2022. This recommendation for approval is contingent upon the following conditions:

* The SDUSD will consult and coordinate with the SDUSD SELPA and the San Diego County Office of Education to review the student’s placement through either an on-site visit to the school or a real-time virtual consultation, 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.
  + After each on-site visit, or real-time virtual consultation, as applicable, the SDUSD shall provide written reports to the CDE Special Education Division (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 on-site review.
* The SDUSD will consult 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, as well as the 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 legally holds the educational rights of the student, each month, to discuss progress and 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 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 SDUSD has previously requested a waiver for the placement of the student at a different uncertified nonpublic school, Devereaux Victoria. Waiver number 23-12-2020 was granted for the time period of January 1, 2021 to December 31, 2021 at the September 2021 SBE meeting. The recommended period for this waiver submission is January 1, 2022, to August 29, 2022.

The SDUSD and the San Diego Unified School District SELPA has requested a child specific NPS certification waiver, previously, for this student. The student, whose special education eligibility category is identified as emotional disturbance, was placed into an NPS by a prior district. SDUSD took over responsibility of student on September 17, 2020, and held a 30-day IEP on October 13, 2020, and determined the Devereaux Victoria NPS continued to be LRE and appropriate FAPE for the student. When the site closed, the student was transferred to the DTTN, and the IEP team agreed on January 25, 2021, that the transfer to DTTN would meet student’s needs, was LRE, and the offer of FAPE.

The student is showing progress towards most IEP goals, but is not currently meeting the majority of them due to continued struggles with self-regulation. There has been a marked improvement in social/emotional behaviors at school; however, the student still struggles with aggression and regression behaviors towards staff and students in the non-academic settings. The student does recognize and want to improve behaviors, and has expressed a strong desire to return to a home setting when these behaviors are addressed and normalized. Although the student is still struggling in some areas (specifically around self-regulation and aggressive behaviors outside of the academic setting), the current placement has been the most stabilizing for the student. The student has demonstrated a desire to please and demonstrate academic competency and is better able to express feelings and attempts to self-regulate. Now that the student is experiencing success, a move now would result in a set-back in the positive progress recently made.

The IEP team, including the educational rights holder for the student, agreed that an out-of-state residential placement was appropriate, and represented the LRE. The IEP team, which included the educational rights holder, along with faculty from the DTTN agreed the DTTN, an uncertified school and RTC in League City, Texas, continues to be the most appropriate placement to meet the student’s unique needs. The DTTN accepted the student into their program and has been able to meet the student’s needs.

The SDUSD has monitored the student’s progress and reports the student has been successful at the DTTN. The DTTN administrator has also reported the student is responding well, both academically and therapeutically, at the DTTN. The IEP team believes the student requires the continued placement and treatment interventions to continue to progress, with discussions currently taking place to discuss a transition plan back to SDUSD. They agree the DTTN continues to be the most appropriate placement for the student.The SDUSD anticipates August 29, 2022, to be the date the student will return to the SDUSD.

If the SBE approves the waiver the SDUSD will be able to use state and federal special education funds for the placement of this student at the DTTN for the period requested.

**Demographic Information:** The SDUSD has a student population of 114,469 and is located in an urban area in San Diego 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 26 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 California Department of Education.

## Fiscal Analysis (as appropriate)

If this waiver is approved, SDUSD may utilize state and federal special education funds for the placement of this student at DTTN. If this waiver is denied, SDUSD may utilize only local funds to support the student’s placement at DTTN. The yearly cost for placement at DTTN for this student is $176,600.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** SDUSD Specific Waiver Request 3-1-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 4-1-2022 | San Diego Unified School District (SDUSD) and the San Diego Unified School District Special Education Local Plan Area  (SDUSD SELPA) | **Requested:** January 1, 2022, to August 29, 2022  **Recommended:** January 1, 2022, to August 29, 2022 | To waive NPS certification to allow the SDUSD and the SDUSD SELPA to use state and federal special education funds for the placement of a student in an uncertified out-of-state residential school | Approval with conditions for the period the student is placed at the uncertified school | 10/26/2021 | The SDUSD and the SDUSD SELPA may not use state and federal special education funds for the placement of the student at the uncertified out-of-state residential school | None |

Created by California Department of Education: July 2022

# Attachment 2: Waiver 4-1-2022 San Diego Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CDE Code: 3768338

Waiver Number: 4-1-2022

Active Year: 2022

Date In: 1/14/2022 6:07:26 AM

Local Education Agency: San Diego Unified

Address: 4100 Normal St.

San Diego, CA 92103

Start: 1/1/2022

End: 8/29/2022

Waiver Renewal: N

Previous Waiver Number: 23-12-2020

Previous SBE Approval Date: 9/15/2021

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: Devereux TX, League City lost their state certification. Three students are currently placed at the site. A move from the current placement would be detrimental to this student. The student had to be moved when Devereux Victoria closed. Within the past two months, the student has finally been able to exhibit a significant increase in participation in all areas of the program (school, therapy, milieu), a decrease in physical aggression and an increase in self-esteem and sense of accomplishment. Now that the student is experiencing success, a move now would result in a set-back in the positive progress recently gained.

Student Population: 122916

City Type: Urban

Local Board Approval Date: 10/26/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Yolanda Hiller

Position: Licensed Mental Health Clinician

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