

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-13

## Subject

Request by **Oceanside Unified School District (OUSD)** and the **North Coastal Consortium for Special Education (NCCSE)** 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 junior high school student with disabilities at an uncertified out-of-state school for students with disabilities located in League City, Texas.

## Waiver Number

6-2-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Oceanside Unified School District (OUSD) and the North Coastal Consortium for Special Education (NCCSE) request to waive California *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 student with disabilities at Devereaux Texas Treatment Network (DTTN), an uncertified school for students with disabilities with a residential treatment center (RTC), in League City, Texas.

The OUSD and the NCCSE have not requested a child specific nonpublic school (NPS) certification waiver, previously, for this student. Prior to the placement of the student at DTTN, the OUSD exhausted all district placement options before contacting multiple in-state and out-of-state NPSs to find a placement for the student.

Since 2012, the student was placed in four in-district placements, two local nonpublic schools, a more restrictive behavioral placement, an out of state non-public school, and finally a placement at DTTN in January of 2022.

Due to severity of student's self-injurious behaviors, verbal aggression towards peers, and physical aggression, the student, whose special education eligibility category is identified as Other Health Impairment (OHI), with a secondary qualification of Autism, was denied admission to 18 certified and 18 non-certified NPSs due to the program and facility design. In each instance, the NPS locations indicated the program design did not include adequate support services to address the student’s disability and behaviors. Additionally, the facility design of each site lacked the required security which is needed to prevent the student’s elopement. As such, the facilities could not ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE).

The individualized education program (IEP) team agreed DTTN, an uncertified school, is able to meet the student’s comprehensive and unique needs which will provide the student with a FAPE. The student was placed at the DTTN program on January 31, 2022.

## 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 (LEA) 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 school 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 OUSD and the NCCSE 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 DTTN, January 31, 2022, through August 31, 2022. This recommendation for approval is contingent upon the following conditions:

* The OUSD will consult and coordinate with the NCCSE 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 onsite visit, or real-time virtual consultation, as applicable, the OUSD 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 onsite review.
* The OUSD 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 OUSD 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 OUSD 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 OUSD meets the conditions of the waiver.

## Summary of Key Issues

The OUSD has not previously requested a waiver for the placement of the student in an uncertified school. The recommended period for this waiver is January 31, 2022, to August 31, 2022.

Prior to this student’s placement at DTTN, the student attended two certified nonpublic school sites. Due to the student’s significant mental and behavioral health needs, the student had great difficulty accessing the educational program provided at the previous placements. In each of the prior placements, the OUSD attempted progressively more restrictive placement options until the student was placed at DTTN. 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. After exhausting all district placement options, the OUSD contacted multiple in and out-of-state certified NPS’s to provide a FAPE to the student. These certified NPSs denied admission due to concerns about their ability to accommodate a student with significant mental and behavioral health needs, and the facilities were unable to ensure the health, safety, and welfare of the student due to the program and facility design. The IEP team, which included the educational rights holder, agreed DTTN, an uncertified school and RTC is the most appropriate placement to meet the student’s unique needs. DTTN accepted the student into their program and has been able to meet the student’s needs.

The OUSD has monitored the student progress and reports the student has been successful at DTTN. The DTTN administrator has also reported the student is responding well, both academically and therapeutically. The IEP team believes the student requires the continued placement and treatment interventions to continue to progress. They agree the DTTN continues to be the most appropriate placement for the student. The OUSD anticipates August 31, 2022, to be the date the student will return to the OUSD.

If the SBE approves the waiver the OUSD 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 OUSD has a student population of 18,671 and is located in a suburban area in San Diego County.

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

Since the September 2018 SBE 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 CDE.

## Fiscal Analysis (as appropriate)

If this waiver is approved, the OUSD may utilize state and federal special education funds for the placement of this student at DTTN. If this waiver is denied, the OUSD may utilize only local funds to support the student’s placement at DTTN.The yearly cost for placement at DTTN for this student is $301,037.75.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** OUSD Specific Waiver Request 6-2-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-2-2022 | Oceanside Unified School District (OUSD) and the North Coastal Consortium for Special Education (NCCSE) | **Requested:** January 31, 2022, to August 31, 2022 **Recommended:** January 31, 2022, to August 31, 2022: | To waive NPS certification to allow the OUSD and the NCCSE to use state and federal special education funds for the placement of a student at the uncertified school | Approval with conditions for the period the student is placed at the uncertified school. | 2/08/2022 | The OUSD and the NCCSE may not use state and federal special education funds for the placement of the student at the uncertified school | None |

Created by California Department of Education: July 2022

# Attachment 2: Waiver 6-2-2022 Oceanside Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3773569

Waiver Number: 6-2-2022

Active Year: 2022

Date In: 2/9/2022 12:14:33 PM

Local Education Agency: Oceanside Unified

Address: 2111 Mission Ave.

Oceanside, CA 92058

Start: 1/31/2022

End: 8/31/2022

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: (*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 a

student with disabilities at an uncertified out-of-state nonpublic school for students with disabilities located in Texas.

Outcome Rationale: The student was not accepted to a CDE certified NPS/residential placement.

CDE Certified programs in and outside of CA would not accept the student due to significant behaviors thus non CDE Certified programs were explored. Devereux Texas Treatment Network (DTTN) has reported they are able to address the student’s unique needs and implement the student’s IEP. This is a program for students with Developmental Disabilities and they provide a variety of services to address the student’s needs.

Student Population: 10

City Type: Suburban

Local Board Approval Date: 2/8/2022

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Leah Dardis

Position: Director of Special Education

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