

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Child Specific NPA or NPS Certification

# California State Board of Education May 2022 Agenda Item #W-04

## Subject

Request by **Moreno Valley Unified School District (MVUSD) and the Moreno Valley Special Education Local Plan Area (MVSELPA)** 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 student with disabilities at Devereux Texas Treatment Network (DTTN), an uncertified out-of-state school for students with disabilities located in League City, Texas.

## Waiver Number

14-12-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The MVUSD and the MVSELPA request to waive California *EC* Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the placement of a student with disabilities at DTTN. DTTN was certified as a nonpublic, nonsectarian school (NPS) by California through December 31, 2021, at which time DTTN’s certification was retired because the Texas Education Agency (TEA) suspended its certification of DTTN’s education program, which is a prerequisite for California’s certification.

The MVUSD and the MVSELPA have not previously requested a child specific NPS waiver for this student. Prior to the placement of the student at DTTN in December 2020, the student attended Devereaux Victoria (DV) in Victoria, Texas. DV’s renewal application for 2021 California certification was denied by the California Department of Education (CDE) due to the suspension of their educational program by TEA. The MVUSD student was transferred from DV to DTTN in December 2020 after the Individualized Education Plan (IEP) team determined the transfer to be the appropriate least restrictive environment (LRE) for the student.

Since MVUSD became aware of DTTN’s impending California certification retirement in December 2021, MVUSD contacted five other out-of-state California certified NPS placement options, and acceptance was denied at all these NPSs for this student, whose special education eligibility category is identified as Emotional Disturbance (ED) with a secondary eligibility of Other Health Impairment (OHI). These NPSs indicated their programs did not include adequate support services to address the student’s behaviors that include self-harm, sexual assault, and violence or they believed the facility design lacked the required security needed to prevent the student’s elopement attempts. As such, none of these facilities could ensure the health, safety, and welfare of the student and the provision of a free appropriate public education (FAPE).

The IEP team agreed that DTTN, which was already serving the student and was able and willing to continue to meet the student’s comprehensive and unique needs, was the LRE to provide the student with a FAPE; therefore, the IEP team recommended that the student continue placement at DTTN into 2022 after California certification is retired.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the LRE. Local Education 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, the student’s parent(s) or guardian(s), and others, as applicable, to decide placement and 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 placements.

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 private school sites 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 submits all required documentation and the Special Education Division (SED) performs a detailed analysis of the documentation. After analysis, the SED decides whether or not to recommend approval of the waiver and, if approval is recommended, whether or not to include conditions specific to the waiver.

## Recommendation

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

The MVUSD and the MVSELPA submitted all required documents as part of the waiver submission process. The SED recommends approval of this waiver, with conditions, for the period beginning January 1, 2022, through December 31, 2022. This recommendation for approval is contingent upon the following conditions:

* The MVUSD will consult and coordinate with the MVSELPA and the Riverside County Office of Education to review the student’s placement via 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 MVUSD 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 MVUSD 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 review of program data. Program data will include progress on IEP goals, school attendance, work completion rate, grades, active participation in the therapeutic program, and incident/safety reports.
* The MVUSD will contact the student and the individual who legally holds the educational rights of the student no less than monthly to discuss progress and address any concerns.
* The MVUSD 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 if there are any changes needed 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 MVUSD meets the conditions of the waiver.

## Summary of Key Issues

The MVUSD 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, 2022, to December 31, 2022.

Prior to this student’s placements at DV and DTTN and due to the student’s significant mental and behavioral health needs, the student had great difficulty accessing the education provided at previous placements. The nature and seriousness of the student’s behaviors resulted in increased safety concerns. In each of the prior placements, the MVUSD attempted progressively more restrictive placement options until the student was judicially placed in a juvenile detention center and received instruction and related services through a juvenile court school.

Following the student’s release from the juvenile detention center and exhausting all district placement options, the IEP team, including the educational rights holder for the student, agreed that an NPS residential placement was appropriate and represented the student’s LRE.The MVUSD contacted three in-state and four out-of-state certified NPSs with residential programs to provide a FAPE to the student. The student, whose special education eligibility category is identified under ED and OHI for chronic Attention-Deficit/Hyperactivity Disorder (ADHD), was placed at at Provo Canyon NPS until September 12, 2019, the Provo Canyon children’s program was discontinued and MVUSD moved the student to DV where the student made substantive growth and developed rapport and relationships with DV teachers and therapists. On December 4, 2020, the MVUSD was notified by CDE that the TEA was suspending the education program at DV and California would be forced to deny DV’s renewal application for 2021 as a result of TEA’s action. To minimize disruption to the student, MVUSD moved the student from DV to DTTN, a then certified out-of-state NPS that shared some staff with DV. A year later, MVUSD was notified that DTTN will lose their California certification beginning January 1, 2022, after suspension of their education program by TEA, thereby threatening the social/emotional growth and progress made by the student at DV and DTTN and creating undue stress to the student, family, and care team. The MVUSD again applied to five out-of-state NPSs seeking a place for the student at a certified NPS, but the student was denied admittance at all five NPSs due to concerns about the ability to accommodate the student’s significant mental and behavioral health needs and to ensure the health, safety, and welfare of the student due to the facility designs.

The IEP team, which includes the educational rights holder, agrees that maintaining enrollment at DTTN, now an uncertified school, is the most appropriate placement to continue to meet the student’s unique needs. The MVUSD has monitored the student’s progress and reports the student has been successful at DTTN. The MVUSD anticipates December 31, 2022, to be the date the student will return to the MVUSD.

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

**Demographic Information:** The MVUSD has a student population of 30,000 and is located in an urban area in Moreno Valley.

## 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 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 MVUSD may utilize state and federal special education funds for the placement of this student at DTTN. If this waiver is denied, the MVUSD may utilize only local funds to support the student’s placement at DTTN.

The yearly cost for placement at DTTN for this student is $413,031 for 12 months. This cost is based on 180 days of regular school year and 20 days of extended year instruction and 365 days of room and board.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** MVUSD Specific Waiver Request 14-12-2021 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 14-12-2021 | MVUSD  and MVSELPA | **Requested:** January 1, 2022, to December 31, 2022  **Recommended:** January 1, 2022, to December 31, 2022 | To waive NPS certification to allow the MVUSD and the MVSELPA 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 | 12/14/2021 | The MVUSD and the MVSELPA 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: January 2021

# Attachment 2: Waiver 14-12-2021 Moreno Valley Unified High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CDE Code: 3367124

Waiver Number: 14-12-2021

Active Year: 2022

Date In: 12/17/2021 1:08.13 PM

Local Education Agency: Moreno Valley Unified High

Address: 25634 Alessandro Blvd.

Moreno Valley, CA 92553

Start: 1/1/2022

End: 12/31/2022

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Child Specific/ NPA or NPS Certification

Ed Code Section: 56366.1(a) **Revision: 56366(d)**

Ed Code Authority: 56101

Ed Code or *CCR* to Waive: 56366.1. **Revision: 56366(d)**

Outcome Rationale: The MVUSD and the MVSELPA request to waive *EC* Section 56366(d), the requirement for state certification, to allow the use of federal and state special education funds for the continuing placement of a student with disabilities at DTTN in League City, Texas, a previously certified NPS with a residential program, currently suspended by the Texas Education Agency (TEA) and retired by the CDE as a certified NPS effective January 1, 2022.

The MVUSD and MVSELPA have not previously requested a child specific NPS certification waiver for this student. Prior to the placement of the student at an out-of-state NPS, the MVUSD exhausted all district and in-state placement options.

Prior to this student’s placement at out-of-state NPSs, the student attended certified NPSs in California. Due to the student’s significant mental and behavioral health needs, the student had difficulty accessing the education provided at the previous placements. The nature and seriousness of the student’s behaviors resulted in increased safety concerns. In each of the prior placements, the MVUSD attempted progressively more restrictive placement options until the student was judicially placed in a juvenile detention center and received instruction and related services through a juvenile court school. Following the student’s release from the juvenile detention center and exhausting all district placement options, the IEP team, including the educational rights holder for the student, agreed that an NPS residential placement was appropriate and represented the student’s LRE.The MVUSD contacted three in-state and four out-of-state certified NPSs with residential programs to provide a FAPE to the student. The student, whose special education eligibility category is identified under ED and OHI for chronic ADHD, was placed at at Provo Canyon, a then certified NPS, until on September 12, 2019, when the MVUSD moved the student to DV where the student made substantive growth and developed rapport and relationships with DV teachers and therapists.

On December 4, 2020, the MVUSD was notified by CDE that the TEA was suspending the education program at DV and CDE would be denying DV’s renewal application for 2021 because of TEA’s action. MVUSD moved the student from DV to DTTN, a then certified out-of-state NPS that shared some staff with DV. Now a year later, MVUSD has been notified that DTTN will lose their California certification beginning January 1, 2022, after suspension of their educational program by TEA, thereby threatening the social/emotional growth and progress made by the student at DV and DTTN and creating undue stress to the student, family, and care team.

The IEP team agrees that DTTN is able to meet the student’s comprehensive and unique needs and continues to offer DTTN as a FAPE.

The MVUSD has contacted five out-of-state certified NPSs with residential programs to provide a FAPE to the student and were waiting at the time of this application on approval from a program with the ability to accommodate this student’s significant mental and behavioral health needs. Since the date of the waiver request, all of these inquiries resulted in denial of admittance. The MVUSD is asking that the student be allowed to remain at the DTTN as it is the most appropriate placement to meet the student’s unique needs without disrupting the educational and mental health progress made to date. The MVUSD has monitored the student’s progress and reports the student has been successful at DTTN. The MVUSD anticipates January 1, 2023, to be the date the student will return to the MVUSD.

Student Population: 30000

City Type: Urban

Local Board Approval Date: 12/14/2021

Audit Penalty Yes or No: N