

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-06

## Subject

Request by **Scotts Valley Unified School District (SVUSD) and the North Santa Cruz Special Education Local Plan Area (NSCSELPA)** 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 Melmark School, an uncertified out-of-state school for students with disabilities located in Berwyn, Pennsylvania.

## Waiver Number

1-1-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The SVUSD and the NSCSELPA 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 a student with disabilities at Melmark School, an uncertified school for students with disabilities in Berwyn, Pennsylvania.

The SVUSD and the NSCSELPA have not previously requested a child specific NPS waiver for this student. Prior to the placement of the student at Melmark School in November 2021, the student was privately placed at Norris Academy in Andersonville, Tennessee since December 2020. Due to severe reactive behaviors, the student has historically been served via settlement agreements in a privately operated 1:1 Applied Behavior Analysis (ABA) based educational program. SVUSD has actively explored California certified placement options for student since December 2020, first at three instate NPSs and then six out-of-state NPSs where acceptance was denied at all these NPSs for the student, whose special education eligibility category is identified as AUT (Autism) with a secondary eligibility of Speech Language Impairment (SLI). These NPSs indicated their programs did not include adequate support services to address the student’s individual needs and/or did not have available placement at the time of referral. As such, none of these facilities could ensure the health, safety, and welfare of the student and the provision of a free and appropriate public education (FAPE).

Melmark, although uncertified, was the only school located that can meet student's needs and accepted her placement. The District is seeking a waiver from the State Board of Education to support her placement at the uncertified private school.

The individualized education program (IEP) team agreed the Melmark School, 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 in the Melmark School program on November 10, 2021. The recommended period for this waiver request is November 10, 2021, to June 2023.

## Background

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a FAPE in the least restrictive environment (LRE). 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 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 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 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 SVUSD and the NSCSELPA submitted all required documents as part of the waiver submission process. The SED recommends approval of this waiver, with conditions, for the period beginning November 10, 2021, through June 2023. This recommendation for approval is contingent upon the following conditions:

* The SVUSD will consult and coordinate with the NSCSELPA and the North Santa Cruz SELPA 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 SVUSD 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 SVUSD will consult with the Melmark School 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 SVUSD 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 SVUSD 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 SVUSD meets the conditions of the waiver.

## Summary of Key Issues

The SVUSD 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 November 10, 2021, to June 2023.

Prior to the placement of the student at Melmark School in November 2021, the student was privately placed at Norris Academy in Andersonville, Tennessee since December 2020. Due to severe reactive behaviors, student has historically been served via settlement agreements in a privately operated 1:1 ABA based educational program. SVUSD has actively explored California certified placement options for student since December 2020, first at three instate NPSs and then six out-of-state NPSs where acceptance was denied at all these NPSs for the student, whose special education eligibility category is identified as Autism (AUT) with a secondary eligibility of Speech Language Impairment (SLI). These NPSs indicated their programs did not include adequate support services to address the student’s individual needs and/or did not have available placement at the time of referral. As such, none of these facilities could ensure the health, safety, and welfare of the student.

The individualized education program (IEP) team, which includes the educational rights holder, agrees the Melmark School, an uncertified school, is the most appropriate placement to meet the student’s unique needs. The SVUSD due to the pandemic, has monitored student progress and conducted meetings with Melmark staff via zoom and over email, and student's parents have also participated in an onsite visit. The SVUSD has requested a waiver for the period beginning November 10, 2021, through June 2023, and will review placement in the LRE at that time.

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

**Demographic Information:** The SVUSD has a student population of 2635, and is located in a suburban area in NSCSELPA.

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

The yearly cost for placement at the Melmark for this student is $446,175.00. This cost is based on education and treatment annually.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** SVUSD Specific Waiver Request 1-1-2022 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-1-2022 | SVUSD and NSCSELPA | **Requested:** November 10, 2021- June, 2023 (per legal agreement)  **Recommended:**  November 10, 2021- June 2023 | To waive NPS certification to allow the SVUSD and the North Santa Cruz 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 | 11/9/2021 | The SVUSD and the NSCSELPA 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 1-1-2022 Scotts Valley Unified High School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4475432

Waiver Number: 1-1-2022

Active Year: 2022

Date In: 1/5/2022 5:03:59 PM

Local Education Agency: Scotts Valley Unified

Address: 108 Whispering Pines Dr., Suite 115

Scotts Valley, CA 95066

Start: 11/10/2021

End: 11/10/2022

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: SVUSD and the NSCSELPA request to waive *EC* Section 56366(d), the requirement for state certification, to allow the use of state and federal special education funds for the placement of a student with disabilities at Melmark School in Berwyn, Pennsylvania, an uncertified private school with a residential program.

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

The SVUSD student with disabilities requires intensive support in a NPS that is able to address her unique needs, whose special education eligibility of autism, communication deficits, and severe aggressive behaviors requires a more restrictive setting as the LRE. The SVUSD sought placement at all NPS certified placements that were able to meet the student's needs, but did not locate an instate or out-of-state certified placement that was able to offer her admission given space and staffing constraints exacerbated by the Covid-19 pandemic.

The IEP team agrees that the Melmark School is able to meet the student’s unique needs and offers a program as a FAPE.

Student Population: 2635

City Type: Suburban

Local Board Approval Date: 11/9/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N