

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024090473

DECISION

January 16, 2025

On September 13, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming San Francisco Unified School District, called San Francisco. The matter was continued for good cause on September 19, 2024. Administrative Law Judge Tiffany Gilmartin heard this matter on November 19, 20, 21, and 22, and December 2, 4, and 5, 2024.

Evan Goldsen, Carly Christopher, and Eric VerWest represented Student. Parents attended all hearing days on Student's behalf. Brenda Arzate represented San Francisco. San Francisco Director of Special Education, Margaret Espinosa, attended all hearing days on San Francisco's behalf.

At the parties' request the matter was continued to December 30, 2024, for written closing briefs. The record was closed, and the matter was submitted on December 30, 2024.

## PRELIMINARY MATTER

On November 4, 2024, OAH held a prehearing conference, and the undersigned administrative law judge clarified the issues. The November 4, 2024, Order Following Prehearing Conference identified the final issues for hearing. The Order specifically stated:

"A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing stating its concern and referring to supporting portions of the complaint, allowing enough time for the issue to be decided before the hearing. No motion to amend the issues may be made for the first time at the hearing."

On November 18, 2024, Student filed a request to dismiss issues. The same day, Student also filed a motion to correct statement of issues. On the first day of hearing, the Student's request to dismiss issues was granted. Student's motion to correct statement of issues was also heard. San Francisco had no objection to Student's motion to correct statement of issues. The issues below were the issues confirmed for hearing.

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## ISSUES

1. Did San Francisco deny Student a free appropriate public education, called FAPE, from September 13, 2022, through the 2022-2023 school year, by:
  - a. Failing to offer appropriate accommodations and services in the area of nurse support;
  - b. Failing to implement Student's individualized health plan, called IHP;
  - c. Denying Parents meaningful participation by failing to include a nurse on Student's individualized education plan, called IEP, team who has training and experience to implement Student's IHP;
  - d. Denying Parents meaningful participation by failing to consider and timely implement Student's physicians' recommendations;
  - e. Denying Parents meaningful participation by failing to consider Parents' input and concerns;
  - f. Denying Parents meaningful participation by failing to provide written guidelines of Student's implemented special education services?
2. Did San Francisco deny Student a FAPE during the 2023-2024 school year by:
  - a. Failing to assess in mental health;
  - b. Failing to offer goals in mental health;

- c. Failing to offer appropriate accommodations and services in the areas of mental health and nurse support;
  - d. Failing to update Student's IHP;
  - e. Failing to implement Student's IHP;
  - f. Denying Parents meaningful participation by failing to include a nurse on Student's IEP team who has training and experience to implement Student's IHP;
  - g. Denying Parents meaningful participation by failing to consider and timely implement Student's physicians' recommendations;
  - h. Denying Parents meaningful participation by failing to consider Parents' input and concerns;
  - i. Denying Parents meaningful participation by failing to provide written guidelines of Student's implemented special education services?
3. Did San Francisco deny Student a FAPE during the 2024-2025 school year, through September 13, 2024, by:
- a. Failing to offer goals in mental health;
  - b. Failing to offer appropriate accommodations and services in the areas of mental health and nurse support;
  - c. Failing to update Student's IHP;
  - d. Failing to implement Student's IHP;
  - e. Denying Parents meaningful participation by failing to consider and timely implement Student's physicians' recommendations;

- f. Denying Parents meaningful participation by failing to consider Parents' input and concerns;
- g. Denying Parents meaningful participation by failing to provide written protocols of Student's implemented special education services?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code

Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student carried the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was nine years old and in third grade at the time of hearing. Student resided within San Francisco's geographic boundaries at all relevant times. Student was eligible for special education under a primary category of other health impairment and a secondary category of speech and language impairment.

Student has congenital central hypoventilation syndrome, called CCHS, and gene mutation. Student's CCHS impacts Student's breathing especially during sleep or when he is ill. This results in a shortage of oxygen and a build up of carbon dioxide in the blood. He requires mechanical ventilation at night because of an impaired autonomic nervous system. He has an uncuffed single cannula tracheostomy that provides oxygen to him at night or when he is ill. He requires ventilation and carbon dioxide monitoring as well as oxygenation readings at least two times per school day. When he is ill or congested he also requires tracheostomy suctioning.

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ISSUE 1(a): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE ACCOMMODATIONS AND SERVICES IN THE AREA OF NURSE SUPPORT FROM SEPTEMBER 13, 2022, THROUGH THE 2022-2023 SCHOOL YEAR.

The main dispute at hearing centered on whether the nursing care offered to Student was sufficient to provide Student a FAPE. Neither party disputed Student required IEP-based nursing services. Student argues he required a nurse with specialized training in changing a tracheostomy on a live patient. San Francisco argued all nurses assigned to Student's care were practicing within their licensed scope and that is sufficient.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.)

A child's educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58.) Educational benefit is not limited to academic needs, but also includes the social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.)

Student's annual IEP team meeting held on November 8, 2022, offered Student 1,800 minutes weekly of health and nursing support including lunch breaks from November 8, 2022, through November 7, 2023. San Francisco contracted with an outside organization to have a licensed nurse provide the nursing care for Student.

Student's closing brief conflated implementation with a failure to offer nursing services. Student also argued San Francisco failed to provide direct or indirect supervision of the nurse provided to Student. These contentions will be addressed below.

Student's expert Dr. Gwynne Church credibly testified Student required one-on-one nursing care. Church, a pulmonologist with University of California at San Francisco, called UCSF, stated Student required a nurse who had experience changing a tracheostomy on a live patient. Student's closing brief alleged Church testified Student



required a registered nurse with experience in changing a live tracheostomy; however, this misstated her testimony. Church never distinguished a licensed vocational nurse from registered nurse in her recommendation. She argued it was the experience of performing the task on a live patient that was tantamount.

San Francisco's expert Dr. Neeti Doshi, a pediatrician with UCSF who also serves as the physician of record for San Francisco, recommended Student required a one-to-one nurse. Doshi argued, however, any nurse rendering care to Student did not require prior experience changing a live tracheostomy. Doshi stated competency with changing a tracheostomy could be developed through a mixture of simulation and training courses.

San Francisco provided Student one-to-one care from a licensed nurse. Student introduced no evidence to distinguish Student required a registered nurse over the licensed vocational nurse San Francisco provided. Student did not meet his burden to demonstrate the nurses San Francisco provided were not licensed or failed to possess the credentials required to care for Student.

Student's insistence that only a nurse who has experience changing a tracheostomy on a live patient is sufficiently qualified is not supported by any law or regulation. While Student may wish that his nurse has this experience, Student provided no evidence of any training or licensing program that necessitate practice on a live patient for certification by the State of California.

Church's testimony on the surface seemed logical and compelling. Best practices, it would appear, would dictate only a nurse who had performed a key task, such as changing a tracheostomy on a live patient, would be competent to provide care to

Student. The State of California determined nursing competency to be on a continuum and includes assessment of competencies throughout the hiring process, orientation, and employment. (Cal. Code Regs. tit. 15, § 3999.147). Church's recommendation provided no possibility for training and competencies to be developed as the statute provides. (Cal. Code Regs. tit. 15, § 3999.147).

Moreover, the opinion stood alone with no context. It was unclear from Church's opinion that a nurse who changed a tracheostomy on live patient one time 20 years prior would be deemed appropriate to provide care for Student; yet a nurse who engaged in constant competency validation, as required by statute, but had never performed the skill on a live patient would be deemed unfit. Her opinion did not comport with what the State of California has determined to be competence development.

Doshi's opinion comported with the law regarding competency development. Doshi, like Church, agreed that in a perfect situation Student would have a nurse who had changed a tracheostomy on a live patient. However, Doshi's opinion also recognized the continuum of competency as dictated by the State of California. Church's opinion required competency only during the hiring process. Doshi's opinion reflected competency is an evolving process based on the internal and external requirements of the position. Thus, Doshi's opinion that experience in tracheostomy management could be developed through a mixture of simulation and training that was specific to Student was more persuasive and given more weight.

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Moreover, Student's argument he required a registered nurse was undercut by his own witness. Licensed Vocational Nurse Andrew Alderman provided care to Student from January 2023 until December 2023. During this time, Alderman developed a strong rapport with Student and Parents. Alderman received his nursing license in 2022. Alderman's rapport with Student extended to off-hours as he was also entrusted by family to provide babysitting services to Student. The family spoke glowingly of Alderman's care and presence in Student's life.

Alderman started the position without ever changing a tracheostomy on a live patient. He attended a Pediatric Emergency Assessment, Recognition and Stabilization, a course that prepares students to provide lifesaving interventions to pediatric patients experiencing respiratory emergencies through real patient cases, realistic simulations and animations. Alderman gained his competence in tracheostomy care through a mixture of training and simulation.

Parents specifically pointed to the training they received from the UCSF hospital prior to Student's discharge at birth where they were able to practice changing Student's tracheostomy under supervision as the type of skill development necessary to be able to render care to Student during his school day.

Student, up to the point of hearing, had never required a live tracheostomy change during the school day. An active third grader, he played soccer and video games with his peers. Student's argument that a higher standard was required to provide Student a FAPE than what the State of California has determined is appropriate for licensure is misplaced and not supported in law.

The evidence did not establish that Student required a registered nurse rather than a licensed vocational nurse to provide nursing services. Additionally, the evidence did not establish that Student's one-to-one nurse needed training on a live patient to be competent or considered sufficiently trained to serve in that capacity.

Student failed to meet his burden that San Francisco's offer of nurse services at the November 8, 2022, IEP team meeting offered inappropriate nursing services.

**ISSUE 1(b): STUDENT PROVED SAN FRANCISCO DENIED STUDENT A FAPE FROM SEPTEMBER 13, 2022, THROUGH THE 2022-2023 SCHOOL YEAR BY FAILING TO IMPLEMENT STUDENT'S IHP.**

Student contends San Francisco materially failed to implement Student's IHP, specifically, his nursing services from September 13, 2022, through the remainder of the 2022-2023 school year. Specifically, Student contends he was deprived of one-to-one nursing care when his assigned nurse took breaks during the day, and he was left unattended. Further, Student contends he was deprived of nursing care when his assigned nurse was absent, and no substitute nurses were available to allow Student to attend school.

A school district violates the IDEA if it fails to provide special education and related services in conformity with a student's IEP. (20 U.S.C. § 1401(9)(D).) When a school district does not conform exactly with the IEP, the district only violates the IDEA if it materially failed to implement the IEP. (*Van Duyn v. Baker Sch. Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 815, 822.) A material failure occurs when there is more than a minor discrepancy between the services provided and those required in the IEP. (*Id.* at p. 822.)

At the start of the 2022-2023 school year, San Francisco offered a licensed vocational nurse to provide support to Student. However, the nursing support was demonstrably spotty as the assigned nurse left Student unattended during the duty day, and the contract provider did not have sufficient substitute nursing support to ensure Student had one-to-one nursing support every school day.

Student's assigned nurse would leave Student unattended during the day to eat her lunch. Student was observed sitting alone during an outdoor activity due to the nurse's absence.

Student also missed parts of his school day when his nurse was late to work requiring him to remain in the car with his Parents until she arrived as Student was unable to be left unattended without nursing support. Parent notified San Francisco on November 3, 2022, that she observed Student was left without nursing support for a half hour.

Parent credibly testified to occasions when Student's assigned nurse was ill and unable to come into work. Parent established when nursing services were unavailable Student was unable to safely attend school. Parent further credibly testified Student was unable to attend school on April 3 and April 4, 2023, due to Alderman being ill and San Francisco being unable to provide a substitute nurse.

As Student was unable to safely attend school without nursing services, for this Student specifically missing nurse support was a material failure of San Francisco to implement Student's IEP.

Student proved San Francisco failed to implement his IEP from September 13, 2022, through December 16, 2022, and for April 3 and 4, 2023 regarding his IHP.

ISSUE 1(c): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE FROM SEPTEMBER 13, 2022, THROUGH THE 2022-2023 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO INCLUDE A NURSE ON STUDENT'S IEP TEAM WHO HAS TRAINING AND EXPERIENCE TO IMPLEMENT STUDENT'S IHP.

Student contends San Francisco impeded Parents' meaningful participation in the IEP process by failing to include a nurse who has training and experience to implement Student's IHP. San Francisco contends it did not impede Parent's meaningful participation in the IEP process. Specifically, San Francisco contends it had the required personnel present at Student's annual IEP team meeting. San Francisco ensured a central nurse coordinator was present at the meeting to discuss any questions that arose resulting from Student's IHP.

Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14) and 1414(d)(1); 34 C.F.R. §§ 300.320, 300.321, and 300.501; see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a).) The IDEA mandates an IEP team must include the parents of the child, no less than one general education teacher, no less than one special education teacher, a district representative knowledgeable about district resources, and an individual who can interpret the instructional implications of evaluation results. (34 C.F.R. 300.321 (a)). Discretionary individuals include participants who at the discretion of the parents or the district have knowledge or special expertise. (34 C.F.R. 300.321 (a)).

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The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b) (2006); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) Among the most important procedural safeguards are those that protect the parents' "right to be involved in the development of their child's educational plan." (*Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882 (Amanda J.)) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Student's annual IEP team meeting was held on November 8, 2022. Present included Skylar Taylor, resource specialist program teacher, Rayven Wray, general education teacher, Marina Wilson, speech and language pathologist, Stacey Shoemaker, central nurse coordinator, Christelle Hutin, assistant principal, and Parents. Prior to the meeting, Parent raised concerns about the quality of Student's assigned one-to-one nurse. At the time of the meeting, Student's school site nurse was on leave. Shoemaker, registered nurse, and a central nurse coordinator for San Francisco, attended the IEP team meeting in her place.

San Francisco had a nurse on Student's IEP team who had the training and experience to implement Student's IHP.

Accordingly, Student failed to establish Parents were denied meaningful parental participation regarding the nurse participation at Student's annual IEP team meeting or anytime throughout the IEP development process from September 13, 2022, through the end of the 2022-2023 school year.

ISSUE 1(d): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE FROM SEPTEMBER 13, 2022, THROUGH THE 2022-2023 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO CONSIDER AND TIMELY IMPLEMENT STUDENT'S PHYSICIANS' RECOMMENDATIONS.

Student asserts San Francisco failed to consider and timely implement Student's physicians' recommendations. Thus, Student maintained Parents were denied meaningful participation in Student's decision-making process.

Student's contention San Francisco failed to consider and timely implement Student's physicians' recommendations is unpersuasive. As discussed above, Student's own physician submitted a letter requesting Student be provided one-to-one nursing care. As established above, San Francisco offered that level of nursing care.

The evidence demonstrated San Francisco did consider and implement Student's physicians' recommendations.

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ISSUE 1(e): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE FROM SEPTEMBER 13, 2022, THROUGH THE 2022-2023 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO CONSIDER PARENTS' INPUT AND CONCERNS.

Student asserts San Francisco denied Parents' meaningful participation by failing to consider Parents' inputs and concerns. San Francisco argues Parents' concerns were considered and addressed.

Student's argument is unpersuasive. Parents' sole contention in this regard was that San Francisco did not consider their input and concerns regarding nursing services and qualifications. Parents raised concerns about nursing coverage and staffing concerns to San Francisco. San Francisco responded to Parents' requests and concerns.

Accordingly, Student did not establish a denial of meaningful parental participation on this basis.

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ISSUE 1(f): STUDENT PROVED SAN FRANCISCO DENIED STUDENT A FAPE FROM SEPTEMBER 13, 2022, THROUGH THE 2022-2023 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO PROVIDE WRITTEN GUIDELINES OF STUDENT'S IMPLEMENTED SPECIAL EDUCATION SERVICES.

Student contends San Francisco failed to provide Parents with all implemented guidelines relating to Student's health care services. San Francisco contends it provided Parents with all documents.

Central Nurse Coordinator Louanne Lee supervised the agency nurse hired to provide care for Student. Lee relied on the California School Nurse Organization guidelines for tracheostomy and ventilator management. Lee did not believe those guidelines were provided to Parent.

Father testified persuasively he had never seen the California School Nurse Organization guidelines for tracheostomy and ventilator management prior to the hearing. Parents expressed concerns throughout the 2022-2023 school year, and during Student's annual IEP team meeting, regarding their understanding of the needed training and experience for Student's one-to-one aide. This became a central disagreement between Parents and San Francisco. San Francisco's failure to provide Parents with a copy of the guidelines San Francisco was using to implement Student's nursing services impeded Parents' abilities to be full participants in the development of Student's IEP process.

Providing these guidelines to Parents was critical to their meaningful participation in Student's IEP process as Student required suctioning throughout the day. These guidelines were used to develop Student's IHP and certify the implementing nurse was providing appropriate care. The evidence established Student, at times, received suctioning that was shorter than necessary to clear his airways. Student's IHP failed to establish any time duration for suctioning activities. The California School Nurse Organization guidelines for tracheostomy and ventilator management required different depth and duration for suctioning than Student's medical orders. Absent sharing the guidelines Parents had no way of knowing the school nurses were relying on different standards for Student's care.

Student established by the preponderance of evidence San Francisco denied Parents meaningful participation in Student's IEP process by failing to provide the California School Nurse Organization guidelines for tracheostomy and ventilator management to Parents as part of Student's IHP development. Student proved San Francisco denied Student a FAPE from September 13, 2022, through the 2022-2023 school year by denying Parents meaningful participation by failing to provide written guidelines of Student's implemented special education services.

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ISSUE 2(a): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN MENTAL HEALTH.

Student asserts San Francisco failed to assess Student for mental health concerns. San Francisco maintains it appropriately assessed Student.

A school district must ensure that a child is assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code § 56320, subd. (f).) The assessment must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6).)

Student's triennial evaluation was conducted on November 15, 2021. He was originally found eligible for special education in the areas of other health impairment and speech and language in 2018. During Student's 2021 triennial psychoeducational assessment, his kindergarten teacher, Jessica Nuila reported she had no concerns regarding Student's behavior or emotional presentation. Student was described as focused on class, able to transition appropriately, and having positive peer interactions.

Student's second grade teacher, James Kennedy, testified at hearing. He described Student as a bright and engaging student. He described a few instances where Student was upset about an issue and raised his concerns to Student's mother. Kennedy reflected on his experiences with Student. Despite the few instances brought to Mother's attention, Kennedy had no concerns about Student's mental health needs, nor did he recall having any concerns when Student was in his class.

Father testified he wanted Student to explore mental health support. He also testified it was during Student's second grade year that Student begun to advocate for greater privacy while having his suctioning performed. The evidence did not establish that Father's desire for mental health exploration or Student's emerging advocacy created a legal requirement for additional assessments.

Student failed to establish that mental health services was an area of suspected disability for which San Francisco should have assessed. Moreover, Student failed to establish any mental health needs that impacted his ability to access his education.

Student did not meet his burden that San Francisco denied him a FAPE during the 2023-2024 school year by failing to assess him for mental health.

## ISSUE 2(b): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER GOALS IN MENTAL HEALTH.

An annual IEP must contain a statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special

education program. (*Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services Mar. 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

Student's November 8, 2022, annual IEP described Student's present levels of academic performance as meeting grade level expectations with no academic concerns. Student spent 98 percent of his time in the general education setting. Student's gross and fine motor development was age appropriate, and he was accessing his education without issue. Student's social and emotional development was reported to be age appropriate. He was happy and engaged with his classmates. He had one social-emotional goal for self-advocacy. Student also had a speech and language goal in articulation. Student's greatest area of need was his diagnosis of congenital central hypoventilation syndrome and the need for a tracheostomy.

Student's November 14, 2023, annual IEP again reported Student meeting or exceeding grade level expectations. No concerns were reported for Student's

- gross and fine motor development,
- social-emotional and behavioral development,
- adaptive, daily living skills and
- vocational development.

He met his self-advocacy goal. His speech and language needs were addressed through an articulation goal. He continued to spend 98 percent of his day in a general education classroom.

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Student's health issues remained his primary area of need. Parents reported Student struggled with failure. They recounted an emotional reaction to his inability to draw a face as assigned. Neither Kennedy, Student's second grade teacher nor Eyad Abdel-Khaleq, Student's third grade teacher, reported any concerns about Student's mental health needs.

Student failed to establish that he had mental health needs requiring an IEP goal.

ISSUE 2(c): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR FOR FAILING TO OFFER APPROPRIATE ACCOMMODATIONS MENTAL HEALTH AND NURSE SUPPORT.

Parents continued to assert the nursing services San Francisco offered were inappropriate. Specifically, Student continued to assert he required a registered nurse with experience changing a tracheostomy to receive a FAPE. San Francisco continued to assert Student's offered nurse support was practicing within their licensed scope.

Student argued he required mental health accommodations. San Francisco argued Student did not require mental health accommodations. As established above, Student failed to meet his burden he required mental health accommodations to receive a FAPE.

Student's IEP team met for its annual review on November 14, 2023. At this meeting, Student remained under the care of Alderman. Parents were comfortable with the nursing services Alderman provided. Parents did not have any concerns regarding nursing support during this meeting.

As established above, Student's FAPE offer for the 2023-2024 school year remained the same as the previous year. Student's FAPE offer included 1,800 minutes of weekly nursing services from November 14, 2023, until November 13, 2024. Student's offer was intended to provide him nursing services for the entirety of the day.

Parents' insistence that only a registered nurse with experience changing a live tracheostomy is required for Student to receive FAPE is inconsistent with their testimony. As established above, Alderman lacked both a registered nursing license and experience changing a tracheostomy on a live patient at the start of his employment. He did have an excellent rapport with Student and Parents. He was Student's assigned nurse during the Fall 2023 semester. He continued to provide afterhours nursing services to Parents and Student. Thus, Parents' testimony is inconsistent with Student's legal position.

Student failed to prove by the preponderance of the evidence that San Francisco's offer of a licensed nursing accommodation for the entirety of the day was inappropriate. Student further failed to prove he required mental health accommodations.

**ISSUE 2(d): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO UPDATE STUDENT'S IHP.**

Student argued San Francisco denied Student a FAPE during the 2023-2024 school year by failing to update Student's IHP.



In California, related services include health and nursing services. (Ed. Code § 56363, subd. (b)(12).) Health and nursing related services include managing an individual's health problems on the school site. (Cal. Code Regs., tit. 5, § 3051.12(a)(2).) Schools must provide appropriate accommodations for the safety and necessary physical care for individuals with disabilities, while simultaneously assuring the personal privacy and dignity of such individuals. (Cal. Code Regs., tit. 5, § 3051.12(b)(3)(B).)

Student established San Francisco committed a procedural violation by failing to completely update Student's IHP; however, not all procedural inadequacies rise to the level of a substantive denial of FAPE. A substantive denial of FAPE occurs only when the procedural inadequacies result in the loss of educational opportunities, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or caused a deprivation of educational benefit. (34 C.F.R. 300.513 (a)(2).)

Here, Mother testified she notified San Francisco in January 2023 that Student's IHP was more than two years out-of-date. Mother testified she requested revisions and updates. Evidence demonstrated San Francisco and Parents were engaged in an on-going revision process. Mother identified and asked for remediation of mistakes such as correcting Student's campus location in his emergency plan. San Francisco engaged with Parents in revising the IHP. Student demonstrated there were mistakes in Student's IHP, but failed to demonstrate those mistakes rose to a substantive denial of FAPE.

ISSUE 2(e): STUDENT PROVED SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT STUDENT'S IHP.

Student contends San Francisco materially failed to implement Student's IHP, specifically, his nursing services during the 2023-2024 school year, by failing to have nursing coverage at all times. San Francisco argues it implemented Student's IHP as required. Student contends requiring Parent to attend school with Student in lieu of his assigned nurse was a failure to implement.

Kennedy, Student's second grade teacher, positively described the relationship between Student and Alderman. Kennedy recalled school site nurse Kathryn Ekegren substituting as Student's one-to-one nurse when Alderman left in December 2023 for another position. He described the relationship as one that required growth as the two got to know each other better. Kennedy's testimony was thoughtful and reflective and given great weight.

He described a handful of times Ekegren was called away from Student to attend to other nurse-related duties such as a minor cut or an injury on the playground. He also testified San Francisco failed to have back up nursing support at least five times.

Kennedy described Mother's presence in the classroom supportively. Mother was very involved in the school. She served on the parents' association. He did, however, have no recollection of Mother ever providing nursing support for Student in lieu of a contracted nurse or district employee. Kennedy did not corroborate Mother's testimony that she was required to provide nursing care to Student when a nurse was not available.

Student's IHP for the 2023-2024 school year provided that on any field trips or planned class outings a Parent would be required to accompany Student. Parents raised concerns with San Francisco about this part of the plan; however, San Francisco never remedied it. Moreover, Student was unable to attend school on November 27, 2023, due to a lack of nursing support when Alderman was ill.

Conditioning Student's participation in school fieldtrips on his parents' attendance is neither free nor public. Student's one-to-one nursing care was critical for him to access his education, any failure to implement his nursing care was a material failure. (See *Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.)

Thus, Student proved San Francisco failed to implement Student's IHP during the 2023-2024 school year.

ISSUE 2(f): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE THROUGH THE 2023-2024 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO INCLUDE A NURSE ON STUDENT'S IEP TEAM WHO HAD TRAINING AND EXPERIENCE TO IMPLEMENT STUDENT'S IHP.

Student argued San Francisco denied him a FAPE by failing to include a nurse during Student's IEP team meetings who had training and experience to implement Student's IHP. San Francisco argues it had all requisite members present at Student's IEP team meeting.

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As discussed above in Issue 1(c), San Francisco had all legally required members of Student's IEP team present at the November 8, 2022 team meeting including a school site nurse who was responsible for implementing Student's IHP. Present at the November 14, 2023, meeting included

- Rachelle Navas-Boudreau, resource teacher;
- Marina Wilson, speech and language pathologist;
- James Kennedy, general education teacher;
- Christelle Hutin, administrator;
- Kathryn Ekegren, Sanchez Elementary site nurse; and
- Father.

Student failed to prove by the preponderance of evidence that San Francisco failed to include a nurse on Student's IEP team who had the training and experience to implement Student's IHP.

**ISSUE 2(g): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE THROUGH THE 2023-2024 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO CONSIDER AND TIMELY IMPLEMENT STUDENT'S PHYSICIANS' RECOMMENDATIONS.**

Student asserts San Francisco failed to consider and timely implement Student's physicians' recommendations. Thus, Student maintained Parents were denied meaningful participation in Student's decision-making process.

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Student argues the physician orders from November 3, 2023, directing Student receive regular chest physiotherapy, known as CPT, to loosen mucus in his lungs was not considered by San Francisco. Student's own closing brief undermined his argument stating Alderman routinely administered CPT to Student after Parents submitted a copy of those orders to Ekegren.

Student further argued his physician recommended 10 seconds of suctioning on Student. Student submitted a July 3, 2023, letter from his primary care pediatrician Dr. Jennfier Albon. The letter distinguishes wet and dry suctioning. The letter is silent to any suctioning duration.

Student provided updated orders specifying he required 10 seconds of suctioning on January 31, 2024.

As discussed above, Student did not meet his burden to demonstrate San Francisco failed to consider Student's physicians' recommendations.

**ISSUE 2(h): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE THROUGH THE 2023-2024 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO CONSIDER PARENTS' INPUT AND CONCERNS.**

Student asserts San Francisco denied Parents' meaningful participation by failing to consider Parents' inputs and concerns. San Francisco argues Parents' concerns were considered and addressed.

Student's argument is unpersuasive. The evidence demonstrated San Francisco responded to Parents' requests and concerns. Mother raised a concern about a nurse who made Student uncomfortable. Mother requested that nurse no longer substitute for Student. San Francisco complied with that request.

The evidence demonstrated San Francisco responded to Parents' concerns. Student did not meet his burden.

ISSUE 2(i): STUDENT PROVED SAN FRANCISCO DENIED STUDENT A FAPE THROUGH THE 2023-2024 SCHOOL YEAR BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO PROVIDE WRITTEN GUIDELINES OF STUDENT'S IMPLEMENTED SPECIAL EDUCATION SERVICES.

As discussed above, San Francisco to date of hearing, had not provided Parents with a copy of the guidelines upon which the nursing staff developed Student's IHP. This continued to be an ongoing need for parental participation in the IEP development process. The discrepancy between the guidelines and Student's medical recommendation for suctioning remained unknown to Parents. This procedural violation resulted in a substantive FAPE violation.

Thus, Student met his burden that Student was denied a FAPE.

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ISSUE 3(a): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY FAILING TO OFFER GOALS IN MENTAL HEALTH.

As established above, Student failed to demonstrate any mental health need impacting his access to his education. No additional facts or evidence were presented to change the analysis of this issue.

ISSUE 3(b): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED HIM A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY FAILING TO OFFER APPROPRIATE ACCOMMODATIONS IN THE AREAS OF MENTAL HEALTH AND NURSE SUPPORT.

Student's FAPE offer of 1,800 minutes of weekly nursing services continued through September 13, 2024. No additional facts or evidence was introduced to change the analysis in Issue 1(a) and 2(c).

Accordingly, Student failed to meet his burden of proof that San Francisco failed to offer appropriate accommodations and services in the area of nurse support.

Student further argued San Francisco failed to offer appropriate mental health support for Student. As established above, Student failed to demonstrate Student had an area of need in mental health and was unable to access his education as a result.

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ISSUE 3(c): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY FAILING TO UPDATE STUDENT'S IHP.

As established above, Student failed to prove San Francisco substantively denied him a FAPE by failing to update Student's IHP. San Francisco provided a draft copy of Student's IHP to Parents. Parents redlined change suggestions.

Student failed to demonstrate how any mistakes in his IHP rose to a substantive denial of FAPE.

ISSUE 3(d): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY FAILING TO IMPLEMENT STUDENT'S IHP.

Student contends San Francisco materially failed to implement Student's IHP, specifically, his nursing services during the 2023-2024 school year. He questioned the competence of Student's currently serving nurse, the school site nurse, and the central nurse coordinator. Student further argued San Francisco required Parents to produce training videos to provide Student a FAPE.

At the start of the 2024-2025 school year the Central Nurse Coordinator Lee reached out to Parents for videos Parent-produced to use for training Student's current nurse and any substitute nurses. Student failed to demonstrate the training videos were required to implement Student's IHP. Instead, the evidence supports San Francisco was working with the family to ensure Student's comfort.



Student raised for the first time in his closing brief a question of competency to Student's currently serving nurse, the school site nurse, and the central nurse coordinator. The evidence demonstrated Student's currently serving nurse Phil Choi holds a vocational nurse license with the State of California. This decision makes no finding on Choi's qualifications beyond being a licensed vocational nurse in the State of California.

This decision makes no finding on the qualifications of Kathryn Ekegren. Ekegren holds a school nurse services credential. Any determination about the competency of her care exceeds the scope of a special education hearing.

The decision makes no finding on the qualifications of Louanne Lee. Lee holds a registered school nurse credential. Any determination about the competency of her care exceeds the scope of a special education hearing.

Student further argued Ekegren being split over two campuses resulted in a failure to implement his IHP. Student failed to show how Ekegren's assignment spanning two campuses resulted in the inability to implement Student's IHP. Student's currently serving nurse is Choi. He is assigned as Student's one-to-one nurse. This fact is fatal to Student's argument that Ekegren's split campus assignment is a material failure to implement. Ekegren was not Student's primary nurse provider. Any days during the time at issue Ekegren may have substituted for Choi, Student failed to demonstrate her split campus assignment impeded her ability to provide one-to-one care to Student.

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San Francisco demonstrated it offered Student a licensed nurse during the 2024-2025 school year through September 13, 2024. Moreover, San Francisco demonstrated it implemented Student's IHP during the 2024-2025 school year through September 13, 2024.

Student failed to meet his burden to demonstrate San Francisco failed to implement his IHP.

ISSUE 3(e): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO CONSIDER AND TIMELY IMPLEMENT STUDENT'S PHYSICIANS' RECOMMENDATIONS.

Student asserts San Francisco failed to consider and timely implement Student's physicians' recommendations. Thus, Student maintained Parents were denied meaningful participation in Student's decision-making process.

There is no evidence Student submitted any additional physician recommendations during this time.

Student did not meet his burden to demonstrate San Francisco failed to consider Student's physicians' recommendations.

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ISSUE 3(f): STUDENT FAILED TO PROVE SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO CONSIDER PARENTS' INPUT AND CONCERNS.

Student asserts San Francisco denied Parents meaningful participation by failing to consider Parents' inputs and concerns. San Francisco argues Parents' concerns were considered and addressed.

Mother investigated the licensing status of a proposed nurse for Student. When Mother expressed concern about the recency of the nurse's license, San Francisco respected Mother's concerns and did not assign that nurse to Student's care. Parents have a right to raise concerns about a staff member's qualifications; however, they do not have the right to select the employee who provides services to Student. (*Swanson v. Yuba City Unified Sch. Dist.*, No. 2:14-CV-01431-KJM-DB, 2016 WL 6039024, at p. 8 (E.D. Cal. Oct. 14, 2016).)

Here, Mother was provided an opportunity to meet potential nurses. Parent subsequently raised concerns about two nurses and neither nurse ended up being assigned to Student.

Student failed to meet his burden San Francisco failed to consider Parents inputs.

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ISSUE 3(g): STUDENT PROVED SAN FRANCISCO DENIED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR THROUGH SEPTEMBER 13, 2024, BY DENYING PARENTS MEANINGFUL PARTICIPATION BY FAILING TO PROVIDE WRITTEN GUIDELINES OF STUDENT'S IMPLEMENTED SPECIAL EDUCATION SERVICES.

As discussed above, San Francisco, to date of hearing, had not provided Parents with a copy of the guidelines upon which the nursing staff developed Student's IHP. A discrepancy between the nursing protocols and the medical recommendation for suctioning for Student still existed. This was unknown to Parents. Having the specific guidelines was necessary for meaningful parental participation in the IEP development process for this Student.

Thus, Student met his burden that Student was denied a FAPE.

## CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

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## ISSUE 1:

### ISSUE 1(a):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE, from September 13, 2022, through the 2022-2023 school year by failing to offer appropriate accommodations and services in the area of nurse support.

San Francisco prevailed on Issue 1(a).

### ISSUE 1(b):

Student proved by the preponderance of the evidence that San Francisco denied Student a FAPE, from September 13, 2022, through the 2022-2023 school year by failing to implement Student's IHP.

Student prevailed on Issue 1(b).

### ISSUE 1(c):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE, from September 13, 2022, through the 2022-2023 school year by denying Parents meaningful participation by failing to include a nurse on Student's IEP team who has training and experience to implement Student's IHP.

San Francisco prevailed on Issue 1(c).

#### ISSUE 1(d):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE, from September 13, 2022, through the 2022-2023 school year by denying Parents meaningful participation by failing to consider and timely implement Student's physicians' recommendations.

San Francisco prevailed on Issue 1(d).

#### ISSUE 1(e):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE, from September 13, 2022, through the 2022-2023 school year by failing to consider Parents' inputs and concerns.

San Francisco prevailed on Issue 1(e).

#### ISSUE 1(f):

Student proved by the preponderance of the evidence that San Francisco denied Student a FAPE, from September 13, 2022, through the 2022-2023 school year by failing to provide written guidelines of Student's implemented special education services.

Student prevailed on Issue 1(f).

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## ISSUE 2:

### ISSUE 2(a):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by failing to assess in mental health.

San Francisco prevailed on Issue 2 (a).

### ISSUE 2(b):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by failing to offer goals in the area of mental health.

San Francisco prevailed on Issue 2(b).

### ISSUE 2(c):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by failing to offer appropriate accommodations and services in the areas of mental health and nurse support.

San Francisco prevailed on Issue 2(c).

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#### ISSUE 2(d)

Student failed to prove San Francisco denied Student a FAPE during the 2023-2024 school year by failing to update Student's IHP.

San Francisco prevailed on Issue 2(d).

#### ISSUE 2(e):

Student proved by the preponderance of the evidence that San Francisco denied Student a FAPE during 2023-2024 school year by failing to implement Student's IHP.

Student prevailed on Issue 2(e).

#### ISSUE 2(f):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by denying Parents meaningful participation by failing to include a nurse on Student's IEP team who has training and experience to implement Student's IHP.

San Francisco prevailed on Issue 2(f).

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### ISSUE 2(g):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by denying Parents meaningful participation by failing to consider and timely implement Student's physicians' recommendations.

San Francisco prevailed on Issue 2(g).

### ISSUE 2(h):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by failing to consider Parents' inputs and concerns.

San Francisco prevailed on Issue 2(h).

### ISSUE 2(i):

Student proved by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2023-2024 school year by failing to provide written guidelines of Student's implemented special education services.

Student prevailed on Issue 2(i).

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### ISSUE 3:

#### ISSUE 3(a):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2024-2025 school year, through September 13, 2024, by failing to offer goals in the area of mental health.

San Francisco prevailed on Issue 3(a).

#### ISSUE 3(b):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2024-2025 school year through September 13, 2024, by failing to offer appropriate accommodations and services in the areas of mental health and nurse support.

San Francisco prevailed on Issue 3(b).

#### ISSUE 3(c):

Student failed to prove San Francisco denied Student a FAPE during the 2024-2025 school year, through September 13, 2024, by failing to update Student's IHP.

San Francisco prevailed on Issue 3(c).

ISSUE 3(d):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2024-2025 school year through September 13, 2024, by failing to implement Student's IHP.

San Francisco prevailed on Issue 3(d).

ISSUE 3(e):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2024-2025 school year through September 13, 2024, by denying Parents meaningful participation by failing to consider and timely implement Student's physicians' recommendations.

San Francisco prevailed on Issue 3(e).

ISSUE 3(f):

Student failed to prove by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2024-2025 school year through September 13, 2024, by failing to consider Parents' inputs and concerns.

San Francisco prevailed on Issue 3(f).

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### ISSUE 3(g):

Student proved by the preponderance of the evidence that San Francisco denied Student a FAPE during the 2024-2025 school year through September 13, 2024, by failing to provide written guidelines of Student's implemented special education services.

Student prevailed on Issue 3(g).

### REMEDIES

Student is entitled to compensatory education for San Francisco's failure to implement Student's IHP, update Student's IHP, and provide Parents with the guidelines of Student's implemented special education services which denied him a FAPE.

Student did not provide any evidence regarding compensatory education. However, administrative law judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*)). In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA, specifically providing Student with a FAPE which emphasizes special education and related services to meet Student's unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006); *Burlington, supra*, 471 U.S. 359, 374.

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School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft “appropriate relief” for a party. (*Puyallup, supra*, 31 F.3d at p. 1496.) An award of compensatory education need not provide “day-for-day compensation.” (*Id.* at p.1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

From September 13, 2022, through December 16, 2022, and for April 3 and 4, 2023, Student demonstrated San Francisco failed to implement his IHP. Student further proved San Francisco failed to implement Student’s IHP at least five times during the 2023-2024 school year, moreover, San Francisco failed to remedy its on-going implementation issue in Student’s IHP requiring Parent to attend any class outings with Student. As Student’s nursing care is essential to his ability to attend school, any deviation from available nursing care is a material failure to implement. Nursing care is not something that can be made up. Student lost at least seven days of schooling due to a lack of an available nurse. Moreover, Student lost a lunch period every day during the fall semester of the 2022-2023 school year while his nurse left him unmonitored to take her lunch break. He was not able to socially engage with his peers during unstructured time. This resulted in a loss of social-emotional development.

To compensate Student for lost social-emotional development due to his lack of nursing support when his nurse left him unattended during her lunch break during the 2022-2023 school year, Student is entitled to 20 hours of compensatory education.

Student may, at Parents' election, attend a structured small-group social skills program or one-to-one counseling through a licensed therapist, not to exceed \$200 per hour, utilizing this pool of hours.

To compensate Student for the denial of FAPE during the 2022-2023 and 2023-2024 school years when Student was unable to attend school due to the lack of nursing coverage, Student will be entitled to 25 hours of academic compensatory education at a non-public agency, called NPA, of Parents' choice, not to exceed \$200 per hour, to replace any lost academic time. These hours are being provided as one-to-one hours.

Services may be accessed from a NPA of Parents' choice. Parents may submit an invoice, and San Francisco shall reimburse Parents within 45 days of receiving the service or pay the NPA directly. Nothing in this order prevents San Francisco from contracting directly with Parent's preferred NPA. These services will be used within two years of the date of this decision. All further requests for compensatory education were carefully considered and are denied.

Finally, San Francisco must provide Parents copies of all guidelines that are used in support of Student's nursing support.

## ORDER

1. San Francisco must fund 25 hours of individual academic tutoring from a NPA of Parent's choice. San Francisco may arrange to contract directly with Parents' preferred NPA. The hours will be available until December 31, 2026, and will thereafter be forfeited.

2. San Francisco must fund 20 hours of social-emotional services which can, at Parents' election, include structured small group social-skills program, or individual counseling from a licensed mental health provider of Parent's choosing. San Francisco may arrange to contract directly with the agency or provider of Parents' choosing. The hours will be available until December 31, 2026, and will thereafter be forfeited.
3. San Francisco must within 30 days of this decision provide Parents with copies of any guidelines relied upon by nursing staff to develop Student's IHP.
4. All other requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings