

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025080736

DECISION

FEBRUARY 11, 2026

On August 12, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming San Francisco Unified School District, called San Francisco. OAH granted a joint request for mediation and due process continuance on August 27, 2025. Administrative Law Judge Tiffany Gilmartin heard this matter via videoconference on December 2, 3, 4, 15, 16, 17, 18, and 19, 2025.

Attorney Evan Goldsen represented Student. Parents attended all hearing days on Student's behalf. Attorney Erin Frazor represented San Francisco. Attorney Claire Gerard-Wimby attended on December 17 and 19, 2025. Director of Special Education

Heather Logan appeared on December 2, 3, 18, and 19, 2025. Director of Special Education Maggie Michels Espinosa appeared on December 4, 16, and 17, 2025. Director of Special Education Matthew Lavoie appeared on December 15, 2025.

At the parties' request, OAH continued the matter to January 12, 2026, for written closing briefs. The record was closed, and the matter was submitted on January 12, 2026.

## ISSUES

1. Did San Francisco deny Student a free appropriate public education, called FAPE, during the 2024-2025 school year by failing to:
  - a. provide Parents timely and accurate information about Student's behavior incidents at school;
  - b. provide Parents timely and accurate information about the amount of time Student was placed in a "quiet room" adjacent to the special day class and excluded from his peers and a credentialed teacher;
  - c. meaningfully consider the recommendations by independent educational evaluator Dr. Mickell Lethco at the individualized education program, called IEP, team meetings held on April 10, 28 and May 5, 2025?
  - d. offer appropriate placement reasonably calculated to provide him a FAPE at the April 10, 28, and May 5, 2025 IEP team meetings?

## 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 FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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 filed this

matter and bore 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 15 years old and in ninth grade at the time of hearing. Student resided within the San Francisco's geographic boundaries at all relevant times. Student was special education eligible in the primary category of autism with a secondary category of intellectual disability.

### HISTORY OF STUDENT'S NEEDS AND IEP OFFERS

The main dispute at this hearing centered around Student's placement and whether he required a residential treatment center to receive a FAPE. Student was placed, via IEP, at Marina Middle School in a mild-moderate autism focused class for his sixth, seventh, and eighth-grade years. Student struggled with physically unsafe behaviors, elopement, functional communication, and peer relationships. Student did not eat and would rarely use the restroom while at school.

Student started demonstrating behavioral changes at home such as increased isolation and outwardly volatile behavior towards his parents and family pets during the summer of 2024. Student stopped wanting to go on car rides and explore his neighborhood. These were activities he previously enjoyed. As discussed more fully below, the intensity of Student's needs presented very differently in the school and home environments. This disparity significantly impacted the parties' perception of an appropriate placement for Student.

During sixth grade, Student had needs in speech and language, behavior, and academics. Student's seventh-grade IEP, dated May 3, 2023, for the 2023-2024 school year, offered him 10 goals including, two speech goals, one in expressive and receptive language and one in pragmatic language. Student had five behavior goals,

- one functionally equivalent replacement behavior goal,
- one to address elopement,
- one to address physically unsafe behavior,
- one to address behavior aversion factors, and
- one to address waiting.

Student had three academic goals in mathematics, writing, and reading.

The same IEP offered Student placement in the mild-moderate autism focused class, with a one-to-one aide for the entirety of the school day. Student received 30 occupational therapy minutes per week and two sessions of 30 speech and language minutes per week. Student's behavior supports included 120 minutes of individual monthly consultation between his aides and the behavior staff and 120 minutes group consultation provided by a San Francisco behavior analyst to support data collection and observation, class reinforcement, and in-class support. Parents consented to the May 3, 2023 IEP on November 13, 2023.

On October 31, 2023, Student had a behavioral emergency that resulted in his mother picking him up from school. Student had become dysregulated over losing his balloon. Student was removed from the classroom with balloons, but kept returning to try to pop other students' balloons. When the teacher and the aide attempted to remove him from the classroom, he threw a computer at the teacher, smacked her in the

face, and then kicked her in the chest. He then exposed himself and urinated on himself. When his mother picked him up, Student's behaviors re-escalated and he knocked over a stack of laptops. Student was suspended as a result.

San Francisco convened an IEP team meeting on November 13, 2023, to discuss Student's behavior concerns. San Francisco proposed, and Parent consented to, updating Student's functional behavior assessment. Parents raised concern with Student's behaviors at home and his increasing difficulty in accessing his community.

An IEP team meeting was convened on January 22, 2024, to discuss the assessment results. San Francisco presented an updated behavior intervention plan focusing on elopement and physically unsafe behaviors. The behavior intervention plan noted Student eloped or attempted to elope from the immediate instructional area at a rate of one to three times per hour. The intensity of Student's elopement ranged from leaving the immediate learning area to leaving the classroom. The behavior intervention plan also noted Student could engage in physically unsafe behavior such as throwing soft objects, swatting at staff with an open hand, to using force to hit staff with a closed fist. Known antecedents for Student's behavior included demands to engage in non-preferred activities, adult attention diverted or removed, too much wait time, and not knowing when non-preferred activity will end. Among the supports identified to address the problem included access to an enriched environment with a variety of preferred items and activities, access to continuous adult attention and supervision, and a school-home communication log for daily updates of Student's behavior.

San Francisco convened Student's annual IEP team meeting on June 4, 2024, to make an IEP offer for Student's eighth-grade school year, the 2024-2025 school year. Parents raised concerns at this IEP team meeting that Student was not demonstrating

conversational skills at home and he struggled with following one-step directions. Student's FAPE offer provided placement in a mild-to-moderate autism focused special day class for 56 percent of his day, and a one-to-one aide for the duration of the school day. San Francisco offered 120 individual occupational therapy minutes monthly and 240 group speech and language services minutes monthly. San Francisco offered 120 behavior intervention services minutes monthly where staff serving Student would receive direct training on his behavior intervention plan, data collection, and direct support. While the IEP team recommended no changes to Student's behavior intervention plan it offered extended school year services. San Francisco did not increase Student's services and supports to address his changed needs.

Parents consented to this IEP on October 31, 2024.

#### ISSUE 1a: SAN FRANCISCO DID NOT FAIL TO PROVIDE PARENTS TIMELY AND ACCURATE INFORMATION ABOUT STUDENT'S 2024-2025 BEHAVIOR INCIDENTS AT SCHOOL

Student argues San Francisco's communication lacked information regarding the function, severity, and description of the behavior thus impeding Parents' ability to meaningfully participate in the IEP process. Student maintains any previously unseen behaviors necessitated a behavior emergency report and San Francisco's failure to generate the report denied Student a FAPE.

San Francisco contends it timely notified Parents regarding Student's behaviors at school as legally required. The evidence demonstrated San Francisco provided daily updates to Parents regarding Student's behavior and timely notified Parents when Student's behavior escalated into more serious behavior than previously seen.

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 individualized education program, referred to as 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 (2007), 300.321 (2006), and 300.501 (2006).)

Behavioral emergency reports are required whenever emergency interventions are employed to control a student's behavior. Emergency interventions include

- physical management,
- stability hold,
- restraint,
- escorting a student,
- transportation,
- seclusion,
- containment, or
- police intervention. (Ed. Code § 56521.1).

When behavior emergency reports are created for students with IEPs who have positive behavior intervention plans, and the incident involves previously unseen serious behaviors or the previously designated intervention is ineffective, the matter shall be referred to the IEP team to review and determine if there is a need to modify the behavior intervention plan. (Ed. Code § 56521.1).

Student started the 2024-2025 school year as an eighth grader at Marina Middle School. Student's maladaptive behaviors continued during the 2024-2025 school year. Student's behavior intervention plan addressed elopement and physically unsafe behaviors.

Student's special education middle school teacher Marissa Ellison, also referred by her married name Hinckley-Barnes, testified for almost eight hours during this hearing. Ellison was Student's teacher for sixth, seventh, and eighth grade and spoke authoritatively and extensively regarding her communications with Parents about Student's behavior incidents. Ellison's testimony was clear, measured, and consistent with the evidence and not challenged in any significant way during cross-examination. Thus, Ellison's testimony was given significant weight.

Student completed a daily check-in log that was taken home with him. He completed the morning and afternoon sections. There was a space below where Ellison or Student's aide could include additional information about Student's day. During the fall semester there were at least seven daily communication logs sent home notifying Parents of escalating, but controllable incidents. Ellison's testimony and the documentary evidence established the communication logs informed Parents when Student

- had behavior difficulties requiring additional breaks,
- when he eloped into the school kitchen,
- when he had difficulty staying regulated,
- when he would not eat,
- when he urinated in the classroom, and
- when his computer use was restricted.

Ellison also sent home more detailed information via email when Student's behavior required. On September 20, 2024, Student became dysregulated as soon as he got to school. While staff was able to move him to the more calming sensory room, Student displayed frantic and uncontrollable behavior. Student was climbing onto the washing machine, and radiator before calming down. Ellison notified Parents via text message and email that same day.

Student's aides tracked his behavior. Board Certified Behavior Analyst, called a BCBA, Caroline Baum, reviewed the data taken by Student's aides. Baum's testimony was thorough, specific, and based upon her personal knowledge of the tracking system and communications with Parents. Baum's testimony was further corroborated by the documentary evidence presented. Thus, Baum's testimony was given significant weight.

Student was tracked across five targeted behaviors during the 2024-2025 school year. These behaviors included elopement high and low, biting, spitting, yelling, moving items, and marked the first incident of self-injurious behavior on October 17, 2024.

Baum established that Student was demonstrating increasing functional communication skills such as asking for space, completing "would you rather" statements, and negotiating with aides rather than becoming dysregulated. As part of Student's behavior intervention plan, Student was encouraged to use the sensory room for preferred activities and calming techniques.

Despite developing better communication skills, Student began demonstrating self-injurious behaviors such as hitting his head against hard objects and biting his hands in October 2024. The first documented occurrence of self-injurious behavior happened when Student attempted to elope towards the front door. When he was re-

directed, he threw himself on the ground and slammed his head into the floor twice before the aide was able to provide protection from any further strikes. Student's communication log noted the incident. Student's aide reported the incident to Ellison and Marina Middle School's administration the same day. Ellison was on leave and forwarded the email to Baum. Parents followed up with the communication log entry. Ellison provided a report to Parents on October 22, 2024, once she had returned from leave and was able to gather all the facts from those present.

On October 22, 2024, Student's communication log again reported Student was striking his head against the wall and biting his fingers. Ellison provided a more detailed report to Parents on October 23, 2024. Student's communication log on October 29, 2024, noted Student was unsafe at school. On October 31, 2024, Student threw a broom at the bus driver, hit another student in the face, and then ripped a tablet from its charger. The bus driver generated a behavior incident report that was forwarded to Parents. Parents requested placement in a residential treatment center on October 31, 2024, citing Student's escalating behaviors and increasing isolation.

On November 13, 2024, Ellison emailed Parents within three hours of an incident where Student became visibly upset and engaged in head banging and finger biting behavior. Ellison's note provided Parents context to the behavior, what she believed caused him to be upset, and the techniques used to deescalate Student. San Francisco provided Parents timely and accurate information of Student's behaviors at school.

During the spring 2025 semester the evidence demonstrated Student experienced an uptick of maladaptive behaviors. Ellison informed Parents on the same day as the incident. When Student experienced escalated behaviors on a day Ellison was off-site for

other purposes, she responded to Parents the next day. Ellison reached out to Parents sharing her observations of the increased behaviors and checking to see if any home changes might be factoring into the behaviors.

In his closing brief, Student identified the September 20, 2024, incident where Student became dysregulated upon arriving at school, and San Francisco failed to complete a behavior emergency report for the incident. Student's own evidence, however, established Parents were notified the same day of the incident. Student's closing brief also conflates an aide accompanying Student back to a classroom with a "physical escort" rising to a behavior emergency report. This argument fails. Student points to an October 2, 2024, incident where Student attempted to elope, stopped when he was told to by his aide, and Student walked back to the quiet room with two aides until he was sufficiently regulated to walk to his school bus. This incident did not require a behavior emergency report as emergency interventions were neither required nor instituted. Student did not meet his burden to demonstrate the two incidents he cited required behavior emergency reports.

Student further argued in his closing brief that San Francisco provided Parents with incomplete information. Student then points to an October 17, 2024, incident where Student became upset and hit his head on the floor. The incident was reported to Parents the day it occurred. Ellison was on leave when the incident happened and it took her a few days to provide a more complete report to Parents, which she did on October 22, 2024. Student did not meet his burden to demonstrate San Francisco failed to provide Parents with a report for this incident, or other incidents that required a report.

The evidence established Parents were notified of Student's behavior. Parents were given the information to allow them to follow up or call for an IEP team meeting. Nothing precluded Parents from advocating for their child or his special education needs. Student did not challenge the failure to convene an IEP team meeting upon discovery of new behaviors. Thus, no finding is made that following notification the proper procedures were followed; however, the evidence demonstrates Parents were properly notified.

Student did not meet his burden of proof to demonstrate San Francisco failed to provide Parents timely and accurate information concerning behavior incidents at school.

ISSUE 1b: SAN FRANCISCO DID NOT DENY STUDENT A FAPE FOR FAILING TO PROVIDE TIMELY AND ACCURATE INFORMATION ABOUT THE AMOUNT OF TIME STUDENT WAS PLACED IN A "QUIET ROOM" ADJACENT TO THE SPECIAL DAY CLASS AND EXCLUDED FROM HIS PEERS AND A CREDENTIALLED TEACHER.

Student contends he was excluded from his peers and a credentialed teacher when he utilized the sensory room that is adjacent to his special day classroom. San Francisco contends Parents were provided with timely and accurate information concerning Student's use of the sensory room and quiet room spaces and allowed an opportunity to meaningfully participate in the development of Student's IEP. Student failed to meet his burden of proof on this issue.

The sensory room, also called the quiet room, contained a swing, a bean bag, and a Bosu ball. Off the sensory room, there was a quiet room, also called sensory room, that provided a padded, dark enclosure for students and a bathroom. This room was intended to be used by all of Ellison's students when they needed to take a break from the classroom. All students were required to ask permission to utilize the room; however, once permission was requested students were consistently granted access. Student liked using the swing and bean bag in the room. Student was always accompanied by his one-to-one aide when he accessed the sensory room.

The evidence demonstrated and it was supported by the testimony of Ellison and Baum that Student's use of the quiet room was part of Student's behavior intervention plan and discussed with Parents at multiple IEP team meetings. Parents were provided an opportunity to ask questions about how staff and Student utilized the sensory room. Baum reported the sensory room helped Student develop his functional communication skills because he often utilized the sensory room for preferred tasks.

Student pointed to no law that requires a school district to notify Parents each time Student utilized the sensory room in a classroom setting. That is particularly true here where using the room was a component of Student's agreed upon IEP. Student was accompanied into the sensory room by his one-to-one aide and movement and escape breaks were part of his behavior intervention plan.

Student did not meet his burden of proof by the preponderance of the evidence that San Francisco denied Student a FAPE by failing to provide Parents timely and accurate information about the time Student spent in a quiet room.

ISSUE 1c: SAN FRANCISCO DID NOT FAIL TO MEANINGFULLY CONSIDER THE RECOMMENDATIONS BY INDEPENDENT EDUCATIONAL EVALUATOR DR. MICKELL LETHCO AT IEP TEAM MEETINGS HELD ON APRIL 10, 28, AND MAY 5, 2025

Student contends San Francisco denied him a FAPE by failing to meaningfully consider the recommendations of independent educational evaluator Dr. Mickell Lethco at the IEP team meetings held on April 10, 28, and May 5, 2025. San Francisco contends it meaningfully considered Dr. Lethco's recommendations. San Francisco initially convened an IEP team meeting on April 10, 2025. Dr. Lethco participated in all three IEP team meetings convened for Student in the Spring of 2025. Student failed to meet his burden of proof on this issue.

When presented with a private expert's evaluation report or independent educational evaluation at public expense, a school district must consider the results of the assessment, in any decision made with respect to the provision of FAPE to a student. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) The district is not required to adopt the conclusions of such an evaluation. (*Ibid.*; *Michael P. v. Dept. of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066 (fn. 9) (*Michael P.*); See *T.S. v. Board of Education of Town of Ridgefield*, (2nd Cir. 1993) 10 F.3d 87.)

Evidence that district IEP team members have considered a private evaluation include factors such as a lengthy discussion of the evaluation at an IEP team meeting or alteration of IEP provisions in response to suggestions made by the private assessor. (*Michael P., supra*, at p. 1066 (fn. 9).); *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (C.D. Cal., Aug. 1, 2007, No. SACV06847CJCLGX) 2007 WL 9719115, at \*3-4 [nonpub. opn.]

The IEP team is required to consider the expert's input. However, it is not required to follow the outside expert's recommendations. (*Capistrano Unif. Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134.)

San Francisco initially convened an IEP team meeting on April 10, 2025, and subsequently on April 28 and May 5, 2025. Dr. Lethco participated in all three IEP team meetings held on behalf of Student in the Spring of 2025.

Dr. Lethco reviewed her report at the April 10, 2025 IEP team meeting. Dr. Lethco gave her recommendation for a residential treatment center with a focus on life skills. The evidence, including Dr. Lethco's testimony, supports she was an active participant in the meeting, asking questions, and providing suggestions for the team's consideration. Ellison, Baum, and Sara Mireles, a special education supervisor for San Francisco, all persuasively explained during testimony they considered Dr. Lethco's recommendation for residential treatment.

San Francisco established that they considered, but did not agree with Dr. Lethco's recommendation of a residential treatment center. Thus, Student failed to prove San Francisco denied him a FAPE by failing to consider Dr. Lethco's report.

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ISSUE 1d: SAN FRANCISCO DENIED STUDENT A FAPE WHEN IT FAILED TO OFFER HIM AN APPROPRIATE PLACEMENT REASONABLY CALCULATED TO PROVIDE HIM A FAPE AT THE APRIL 10, AND APRIL 28, 2025 IEP TEAM MEETINGS. SAN FRANCISCO DID NOT DENY STUDENT A FAPE AT THE MAY 5, 2025 IEP TEAM MEETING FOR FAILING TO OFFER AN APPROPRIATE PLACEMENT.

Student contends San Francisco denied him a FAPE by failing to provide an appropriate placement. Student contended placement in a residential treatment center was necessary. San Francisco contends Student did not demonstrate he required residential placement to obtain meaningful benefit from his education and that its placement offers were appropriate.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of a special education program and related services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

An IEP provides a statement of the special education, placement, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).) In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

A school district must ensure that an educational program is designed following a number of general procedural requirements so that the student is placed in the least restrictive environment:

- The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;
- Placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
- Unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;

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- In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116 (2006).)

### APRIL 10, 2025 IEP TEAM MEETING

The evidence established that by the April 10, 2025 IEP team meeting, Student's placement in a mild-to-moderate classroom was no longer meeting his needs. Student was no longer reliably accessing his instruction.

While Student met some of his goals in mathematics, functional communication, and pragmatic language, he did not meet his goals in citing evidence and pragmatic language. Of greater concern, was that Student only remained in his mild-moderate class for approximately 60 percent of the time. Ellison established Student preferred spending his day in the sensory room alone with his aide.

The evidence further established Student struggled to generalize his skills outside the school setting during the 2024-2025 school year. Mother established Student had grown more isolated at home. Dr. Lethco's report found Student preferred isolation over peer relationships. Student's pediatric neurological found Student required a firm and predictable schedule. Thus, transitions proved especially difficult for Student.

Accessing education is not limited to academics or only what happens during the school day. A foundational purpose of the IDEA is to ensure that children with disabilities receive a FAPE that, "...prepare[s] them for further education, employment, and independent living." (20 U.S.C. § 1401(d)(1)(A)).

Both Parents and the San Francisco members of the IEP team all agreed his mild-moderate placement was no longer appropriate. Student required more support than his mild-moderate placement provided at the April 10, 2025 IEP team meeting.

Student proved his placement was no longer appropriate. However, at the conclusion of the April 10, 2025 IEP team meeting, no new placement offer was made. Thus, Student's placement offer continued to be a mild-to-moderate autism focused special day class. This placement was not appropriate for Student. Student argued, but did not prove that only a residential placement would meet his needs. To prevail, Student need not establish what would have been an appropriate placement. Rather, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) Student proved that the offered placement no longer met Student's needs.

Thus, San Francisco denied Student a FAPE starting April 10, 2025.

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## APRIL 28, 2025 IEP TEAM MEETING

At the April 28, 2025 IEP team meeting, San Francisco updated Student's behavior intervention plan and added new IEP goals. Three new behavior goals were offered to Student including one in tolerating delays and denials, behavior reduction, and time in class. These goals were intended to support

- Student's functional communication development,
- work on reducing maladaptive behaviors when he did not get his way,
- addressing his elopement, aggression toward others, and self-injurious behaviors, and
- working towards getting Student to spend 75 percent of his day in his designated classroom.

These goals addressed Student's new behaviors recently seen at school. The San Francisco team members argued Student demonstrated growth in reducing his maladaptive behaviors. Mother reported his maladaptive behaviors showed no improvement and new behaviors such as self-injurious behavior were emerging at home.

However, the IEP team did not address Student's continued inappropriate placement. No evidence was offered to demonstrate San Francisco was considering potential placements or offering Parents tours of potential school sites. At the conclusion of the April 28, 2025 IEP team meeting, only Student's annual goals were discussed with Parents.

The evidence established that Student required placement that better addressed his continued behavioral escalations and need for more functional skills development rather than academic skills. At the conclusion of the April 28, 2025 IEP team meeting, San Francisco did not make a new placement offer. As Student's mild-moderate placement was no longer appropriate for Student, his FAPE denial continued through April 28, 2025.

### MAY 5, 2025 IEP TEAM MEETING

On May 5, 2025, San Francisco completed Student's annual IEP process and made a new FAPE offer, including placement, for the 2025-2026 school year. San Francisco offered Student a total of eight goals in

- rate of change,
- verifying change,
- tolerating delays and denials,
- behavior reduction,
- time in class,
- time in specials, and
- two goals for pragmatic language.

The goals addressed Student's needs at the time.

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Based on Student's needs and offered goals, San Francisco offered Student specialized academic instruction in an extensive support needs cross-categorical classroom on a comprehensive campus, 1,000 minutes weekly, five classes per day, for math, English language arts, science, history, and career and health. San Francisco offered a one-to-one aide for 1,915 minutes weekly to support all school activities. He received 120 direct support minutes monthly to his behavior intervention plan, 240 group speech and language minutes, and 120 individual occupational therapy minutes monthly.

San Francisco additionally offered Student accommodations including multiple or frequent breaks, flexible seating for class activities, laminated multiplication sheets, and white board markers. It further offered program modification to include

- recognition tests,
- mastery of functional math concepts,
- spelling graded separately from content,
- alternative books,
- shorter assignments, and
- answers for fill-in-the-blank sections.

San Francisco offered Student extended school year programming and services.

The San Francisco members of Student's IEP team believed Student required placement in the extensive support needs classroom in a cross-categorical setting. San Francisco has two extensive support needs classrooms, the cross-categorical and the autism-focused. The cross-categorical classroom offered Student more access to other students with different abilities. The extensive support needs classroom had a

higher staff-to-pupil ratio over the mild-to-moderate placement at Marina Middle School. The extensive support needs classroom utilized the TeachTown curriculum that focuses on more functional skills versus academic skills which Student needed to address his needs at the time.

Student's extensive support needs teacher for high school, Mickey Manuel, met Student at the beginning of the 2025-2026 school year. In Manuel's class there were 10 students enrolled, including Student. Manuel had six adult aides supporting his classroom. Student also had a one-to-one aide. Manuel described Student's success at participating in the Special Olympic field trip, participating in physical education, and winning at the card game UNO. Manuel radiated calm. He did not appear rattled during testimony as he described how Student worked through the day in his classroom. He appeared to thoroughly enjoy Student in his classroom. He described how Student had requested to go to the De Young Art Museum. He was particularly pleased that Student had recently won a game of UNO as Manuel pointed to the skills Student was developing in sitting down, showing interest in his classmates, and playing long enough to win the game.

Manuel candidly acknowledged that Student occasionally struggled with behavior and had eloped. Student's longest period of dysregulation lasted 45 minutes. Student had some maladaptive behaviors including swiping a wig from a staff member. The most serious incident occurred when Student eloped after having a challenging day. Student accessed a construction site on campus, climbed into a backhoe and moved the controls. The backhoe keys were not in the ignition, so Student was not able to turn the machine on.

Despite these challenges, Manuel believed the extensive support needs classroom could meet Student's needs and he could progress educationally and behaviorally because the program was set up to handle these incidents and assist Student in progressing behaviorally to reduce them. Student would have some access to general education peers and is far less restrictive than residential treatment. All San Francisco's IEP team members agreed with Manuel that this placement was appropriate for Student and the least restrictive environment.

Manuel's testimony was particularly persuasive because he had experience working with students with extensive needs, seemed to demonstrate a clear understanding of Student's progress, yet, also understood his challenges. Manuel's testimony reflected his knowledge of Student and his needs, as well as Student as a unique individual. Manuel's testimony was measured and self-assured and withstood cross-examination. Thus, Manuel's testimony was given significant weight.

Despite his maladaptive behaviors, the evidence established Student's placement in the extensive support needs classroom as appropriate to meet his needs. Student argued he required a residential treatment program to receive FAPE, which is the main disagreement here. The evidence demonstrated inconsistencies with Student's observed behaviors at home by Parents and his observed behaviors in a school environment by San Francisco staff. Dr. Lethco established Student exhibited greater behavior dysregulation after school and on weekends.

Parents, in support of their contention Student required residential treatment, argued Student's behavior deteriorated to the point they feel trapped in their own home. Mother credibly testified that during the 2024-2025 school year Student had declining interest in activities he once enjoyed such as bike rides, car trips,

neighborhood adventures, and a willingness to try certain foods. Student's behavior deteriorated to the point where during an episode, he broke the furniture in his bedroom and urinated on it. He developed animosity toward the family dog, including attempting to physically strike the animal. Most troubling for Mother, was Student's behavior resulting in being detained by the Transportation Security Administration after he bolted through the security checkpoint at an airport and then rampaged through a restaurant knocking dishes off tables. This behavior was so alarming to Parents the only remedy they see is placement in a residential treatment center.

Father's testimony was primarily in narrative form. He was warned repeatedly to only answer the questions asked and not use his answer as an opportunity to respond to prior testimony he heard through the course of the hearing. Where Father's testimony was consistent with Mother's testimony, it was given weight. Where Father deviated from the question presented and responded in a narrative fashion, his answers received less weight.

San Francisco contends, Student's displayed behaviors are containable in the school environment in the cross-categorical extensive support needs classroom with related supports and services. At school, Student is able to access his education with support in the least restrictive environment.

This school-home divide is reflected in the opinions of Student's experts, Dr. Lethco and Dr. Marco who both argue Student requires placement in a residential treatment facility to receive a FAPE. Neither expert, however, have worked with Student in an educational setting.

Dr. Lethco conducted a psychoeducational evaluation of Student in late 2024 and early 2025. Dr. Lethco's report also described the school-home chasm. Her report described how family dynamics were strained due to Student's behavior and that the family, despite eligibility, stopped accessing regional center respite care due to Student's behavior. Dr. Lethco's report included interviews with Ellison, Student's sixth, seventh, and eighth-grade teacher; Xiao Tina Wang, Student's school psychologist; Kayla Twite Lehnen, Student's occupational therapist; Lauren DeSantis, Student's speech-language pathologist; Baum, the board certified behavior analyst, and Dr. Marco, all who also testified during the hearing.

The evidence and her testimony support she conducted an extensive records review of Student's educational history. Her report was consistent with San Francisco's April 2025 psychoeducational re-evaluation regarding Student's cognitive abilities and diagnostic impressions. San Francisco's report diverged from Dr. Lethco's report by also recommending an eligibility category for Student under other health impairment. Dr. Lethco's report differed from San Francisco's report in the recommendation for a residential placement and need for increased family support and parent training.

Dr. Lethco observed Student in his school setting for approximately one hour. She testified she was not familiar with the curriculum, academic supports, or staff-to-student ratio of Student's 2024-2025 placement in mild-to-moderate class nor his 2025-2026 offered placement in the extensive support needs classroom. Dr. Lethco contended Student required the level of support only a residential placement could provide, specifically, the 24-hour support and wrap-around services. Dr. Lethco's lack of familiarity with Student's current placement and curriculum impacted her credibility and the weight her testimony was given.

Student's other expert, Dr. Elysa Marco also recommended Student be placed in a residential treatment center. Dr. Lethco's report also included Dr. Marco's observation about Student's varied presentation at home versus school. Dr. Marco is Student's treating neurologist. She contended Student would benefit from a residential treatment placement; particularly, because she argued Student required a more structured environment. Dr. Marco contended the wrap-around nature of a residential treatment center would stabilize Student.

She further argued the more unified home and school approach inherent in a residential treatment center placement would support Student. Dr. Marco testified that there was no curriculum implemented in a public school that would meet Student's needs. Dr. Marco, however, had never observed Student in his school setting, spoken with his teachers, nor had she participated in any IEP team meetings. She understood Student was in a special day classroom, however, she lacked familiarity in the student-to-staff ratio and curriculum used in Student's placement.

Dr. Marco testified she believed Student would benefit from a residential treatment program, but on cross examination could not pinpoint when she arrived at the determination, nor was she able to articulate that he required a residential program to access his education. Dr. Marco appeared dismissive of the seismic impacts a residential placement would be on Student. She testified both on direct and cross-examination that the only downside she could see to a residential placement for Student was that he might miss his Parents. This demonstrated Dr. Marco's lack of understanding of the effects of a highly restrictive placement on Student's progress educationally if not warranted. For all these reasons, including Dr. Marco's lack of knowledge about Student in a school setting, the program and services offered, and

an understanding of the impact of residential treatment on Student, Dr. Marco's testimony about Student needing a residential placement to access his education was given little weight.

To offer the least restrictive environment, school districts must first ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and second, that special classes or separate schooling occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a) (2006).)

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* 5th Cir. 1989) 874 F.2d 1036, 1050 (*Daniel R.R.*)

To determine whether a special education student can be satisfactorily educated in a regular education environment, the Ninth Circuit United States Court of Appeals has balanced the following factors:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;

3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 [adopting factors identified in *Daniel R.R., supra*, 874 F.2d 1048-1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

## THE EDUCATIONAL BENEFITS OF PLACEMENT FULL-TIME IN A REGULAR CLASS

Neither party argued Student required full-time placement in a general education classroom. Moreover, the evidence demonstrated Student's needs exceeded any educational benefit he would receive from full-time placement in a general education classroom.

## THE NON-ACADEMIC BENEFITS OF INTERACTION WITH CHILDREN WHO WERE NOT DISABLED

The extensive support needs cross-categorical classroom placement offered Student an opportunity to join activities with typically developing peers on the comprehensive school site. This included the food fair, physical education, and participating in the Special Olympic programming that was organized by general

education peers. In contrast, a residential placement program would provide Student no opportunities to interact with typically developing students, experience school-based social opportunities, and integrate into his community.

Under these facts, the second factor weighs in favor of San Francisco's offer of an extensive support needs cross-categorical placement.

### THE EFFECT THE CHILD WILL HAVE ON THE TEACHER AND CHILDREN IN THE REGULAR CLASS

The evidence here demonstrates Student's behavior required supports that exceed what a general education class can provide. These facts tip in favor of San Francisco's offer of an extensive support needs cross-categorical placement.

### THE COSTS OF MAINSTREAMING THE STUDENT

No evidence was presented regarding the cost of mainstreaming. This factor neither supports Student's nor San Francisco's contentions.

The extensive support needs classroom offered Student an opportunity to mainstream with typically developing Students while being provided the supports and services necessary to access his education and in his community. A residential placement is the most restrictive environment for a student. A residential placement would deprive Student of any possible interaction with typically developing peers. In the extensive support needs classroom, Student was able to participate in school rallies, food fairs, and physical education up to his limits. Whereas in a residential placement, Student would have almost no access to typically developing peers, his family, and the

community. With support, Student is able to access his education in the extensive support needs classroom on a comprehensive campus. To leapfrog to residential placement deprives Student of his right to be educated in the least restrictive environment. Every one of the San Francisco members of the IEP team testified placing Student in a residential treatment center was contravening the least restrictive environment requirement. Student also did not meet his burden that any of the least restrictive environment factors tipped in favor of a residential placement.

Student established he required support in generalizing his behaviors to allow him to access his community. The evidence supports that the extensive support needs class has ameliorated the impact of some of his behaviors at school. At home, the evidence supports, challenges remain.

Student met his burden of proof establishing Student was denied a FAPE from April 10, 2025, until May 5, 2025, by failing to offer Student an appropriate placement at the April 10 and April 28, 2025, IEP team meetings.

Student did not meet his burden of proof that San Francisco denied Student a FAPE by failing to offer the appropriate placement to meet Student's needs from May 5, 2025.

## 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.

### ISSUE 1a:

Student failed to meet his burden of proof by the preponderance of the evidence that San Francisco denied Student a FAPE by failing to provide timely and accurate information about Student's behavior incidents at school during the 2024-2025 school year.

San Francisco prevailed on Issue 1a.

### ISSUE 1b:

Student failed to meet his burden of proof by the preponderance of the evidence that San Francisco denied Student a FAPE by failing to provide timely and accurate information about Student's use of the quiet room adjacent to his special day class during the 2024-2025 school year.

San Francisco prevailed on Issue 1b.

### ISSUE 1c:

Student failed to meet his burden of proof by the preponderance of the evidence that San Francisco denied Student a FAPE by failing to meaningfully consider the recommendations provided by independent educational evaluator Dr. Mickell Lethco at the IEP team meetings held on April 10, 28, and May 5, 2025.

San Francisco prevailed on Issue 1c.

## ISSUE 1d:

Student proved by the preponderance of the evidence that San Francisco denied Student a FAPE for failing to offer an appropriate placement at the April 10 and 28, 2025, IEP team meetings. Student failed to prove that San Francisco denied Student a FAPE by failing to offer an appropriate placement at the May 5, 2025 IEP team meeting.

Student partially prevailed on Issue 1d. San Francisco partially prevailed on Issue 1d.

## REMEDIES

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for a FAPE denial. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (*Burlington*)). In remedying a FAPE denial, a student is entitled to relief that is "appropriate" in light of the IDEA purposes, 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).) "Equitable considerations are relevant in fashioning relief" under the IDEA. (*Burlington, supra*, 471 U.S. 359, 374.)

Courts may rectify FAPE denials by providing compensatory education, an equitable remedy that aims to bring the student "to the point he would have been, had he received a FAPE all along." (*R.P. ex rel. C.P. v. Prescott Unified. Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).) An award of compensatory education is not required to provide day-for-day or hour for hour compensation. (*Parents of Student W. v. Puyallup*

*School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallap.*).) By its nature, equitable relief is a fact-specific inquiry in which “the conduct of both parties must be reviewed to determine whether relief is appropriate.” (*Puyallup supra.* 31 F.3d at p.1496.)

Here, Student established he was denied a FAPE during the 2024-2025 school year from April 10, 2025, until May 21, 2025. Parents did not consent to Student’s May 5, 2025 IEP until August 11, 2025. Had Parents consented to the May 5, 2025 IEP before May 21, 2025, San Francisco would have been legally obligated to implement the support, services, goals, and placement offered in the May 5, 2025 IEP starting on May 21, 2025. Instead, San Francisco’s obligation to implement the May 5, 2025 IEP offer started on August 11, 2025. Once Parents consented to the IEP, San Francisco immediately placed Student in his extensive support needs classroom. Thus, Student was denied a FAPE by San Francisco only until May 21, 2025, or for 29 school days.

In remedying a FAPE denial, a student is entitled to relief that is “appropriate” considering the IEP purposes. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Puyallup, supra,* 31 F.3d. at p. 1497.)

Student sought a remedy seeking an IEP placement in a residential treatment center. Student failed to prove that such a placement was appropriate. Student did not submit any evidence that addressed compensatory services including amounts and duration. The undersigned relied upon equitable judicial discretion to craft an appropriate remedy. The undersigned considered numerous options for compensatory education. Among them included mental health and transition support services. Upon reflection of the evidence and requested remedy, Student’s maladaptive behaviors most

significantly impact the relationship between Student and Parent. Most profoundly, how Student's behaviors impact his relationship at home, in his family, and in the community.

In considering all the evidence and taking seriously the recommendations of both Dr. Lethco and Dr. Marco, the need for supportive services to the family seems clear to help Student transition between the home and school environments to help prepare for his future. Dr. Lethco's report highlighted the need for increased family support services to support Student in generalizing his adaptive functioning, social interaction, community engagement, and adaptive communication development in the community when he no longer has the support of a one-to-one aide.

As an equitable remedy, Student will receive compensatory services provided by a licensed BCBA of Parent's choosing to support the generalization of his skills in the community. Given the denial of FAPE found, an award of 30 hours of BCBA services, not to exceed \$250 per hour is appropriate.

## ORDER

1. San Francisco must fund 30 hours of BCBA services from a provider of Parent's choice. The BCBA's rates are not to exceed \$250 per hour. These compensatory services will be available to Student until December 31, 2028.
2. All of Student's 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