

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney  
2 WAYNE SNODGRASS, State Bar #148137  
VINCE CHHABRIA, State Bar #208557  
3 TARA M. STEELEY, State Bar #231775  
Deputy City Attorneys  
4 City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
5 San Francisco, California 94102-4682  
Telephone: (415) 554-4674  
6 Facsimile: (415) 554-4699  
E-Mail: vince.chhabria@sfgov.org  
7

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

OCT - 8 2009

GORDON PARK-LI, Clerk  
BY: AUDREY HUIE  
Deputy Clerk

8 Attorneys for Plaintiff  
9 CITY AND COUNTY OF SAN FRANCISCO

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED JURISDICTION

13 SAN FRANCISCO UNIFIED SCHOOL  
14 DISTRICT,

15 Plaintiff,

16 vs.

17 THE STATE OF CALIFORNIA, THE  
CALIFORNIA DEPARTMENT OF  
18 HEALTH CARE SERVICES, DAVID  
MAXWELL-JOLLY, in his official  
19 capacity as Director, California  
Department of Health Care Services, and  
20 DOES 1 to 10,

21 Defendants.

Case No. 509-499

**[PROPOSED] ORDER RE: ORDER TO  
SHOW CAUSE; DEMURRER,  
MOTION TO STRIKE**

Hearing Date: September 10, 2009  
Hearing Judge: Hon. Peter Busch  
Time: 9:30 am  
Place: 301

Date Action Filed: May 21, 2009  
Trial Date: None Set

1           The Order to Show Cause in response to the ex parte order entered May 27, 2009,  
2 Respondents' Demurrer, and Respondents' Motion to Strike were submitted to Judge Peter Busch in  
3 Department 301 of the above-entitled court on September 10, 2009. Tara Steeley appeared on  
4 behalf of Petitioner the San Francisco Unified School District ("The District"). Joshua Sondheimer  
5 appeared on behalf of Respondents the State of California, the California Department of Health  
6 Care Services, David Maxwell-Jolly ("Respondents").

7           Upon consideration of the papers filed and arguments made at the hearings on August 20,  
8 2009 and September 10, 2009, the Court finds that, unless or until the Department of Health and  
9 Human Services or the Departmental Appeals Board ("DAB") issues a final determination  
10 demonstrating to the contrary, "federal financial participation" is available within the meaning of  
11 California Welfare & Institutions Code § 14132.06 for covered LEA services, otherwise  
12 reimbursable in accordance with state and federal law, that are provided under circumstances that  
13 do not meet the requirements of the "free care" principle. Accordingly, IT IS ORDERED THAT:

14           (1) The District is entitled to a Peremptory Writ ordering Respondents to reimburse the  
15 District for claims submitted by the District after September 10, 2009 for covered "LEA services"  
16 that are otherwise reimbursable in accordance with state and federal law.

17           (2) The order in paragraph 1 above is stayed, and issuance of a writ held in abeyance, to  
18 allow Respondents an opportunity to determine whether they will seek federal financial  
19 participation from the federal government for the services described in this order, and if they decide  
20 to do so, to seek federal financial participation promptly and in good faith.

21           (3) The Parties shall file a status report on November 10, 2009 to inform the Court of  
22 Respondents' decision about whether to seek federal financial participation and the efforts  
23 Respondents have taken to seek federal financial participation. The Parties are ordered to appear  
24 for a status conference before the Court on November 17, 2009 at 9:30 a.m. in Department 301.


1 (3) Respondents' Motion to Strike is GRANTED on the ground that Petitioner has not  
2 adequately pled that it has exhausted its administrative remedies. The District will have 30 days  
3 from the date of this order to file an amended complaint.

4 (4) Respondents' demurrers to the first and second causes of action on the grounds that they  
5 do not state facts sufficient to constitute a cause of action are OVERRULED.

6  
7 October 8, 2009

**PETER J. BUSCH**  
The Honorable Peter Busch  
San Francisco Superior Court

8  
9  
10  
11 Approved as to form:

12  
13  10/7/09  
14 Joshua N. Sondheimer  
15 Deputy Attorney General  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28