

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT AND STUDENT,

v.

LOS ALAMITOS UNIFIED SCHOOL DISTRICT.

CASE NO. 2025030050

DECISION

FEBRUARY 4, 2026

On March 3, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Los Alamitos Unified School District, called Los Alamitos. OAH continued the hearing to October 28, 2025.

Administrative Law Judge Christine Arden heard this matter by videoconference on October 28, 29 and 30, November 4, 5, 6, 12, 13, 18 and 19, and December 1, 2, and 3, 2025. Student elected to have the hearing open to the public.

Parent, who is an attorney, represented Student and attended all hearing days on Student's behalf. Student appeared at the hearing for a portion of one day to testify. Attorney Tracy Petznick Johnson represented Los Alamitos. Grace Delk, Los Alamitos's

Director of Special Education, attended all hearing days, except December 1, 2025, on Los Alamitos's behalf. Kayley Peacock, Los Alamitos's Special Education Coordinator, attended the hearing on December 1, 2025, on Los Alamitos's behalf.

At the parties' request, the matter was continued to January 5, 2026, for written closing briefs. The record was closed, and the matter submitted on January 5, 2026.

ISSUES

The issues for hearing are listed below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Los Alamitos deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years because it failed to identify, locate and assess Student in the areas of
 - functional behavior,
 - educationally related mental health,
 - speech and language,
 - transition,
 - executive functioning, and
 - academics?

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2. Did Los Alamitos deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by offering legally insufficient services, supports, and goals in the areas of specialized academic instruction, mental health, speech and language, and transition?
3. Did Los Alamitos deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years, by materially failing to implement parts of every governing IEP during those years?
4. Did Los Alamitos deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by failing to collect and provide data on Student's goal progress, services, and supports?
5. Did Los Alamitos deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years, by denying Parents meaningful participation in the IEP process, specifically by disregarding or denying their requests for programming and for data on Student's goals and services?
6. Did Los Alamitos deny Student a FAPE by excluding her from meaningful participation in her May 14, 2024 IEP team meeting?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, or IDEA, 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 IDEA, are to ensure:

- all children with disabilities have available to them a FAPE 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 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 ex rel. Schaffer v. Weast* (2005) 546 U.S. 49, 57–58, 62; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof in this case.

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).) This Decision does not cite to the administrative record because it was not available before the issuance of this Decision and OAH policy is that its decisions do not include citations to the record.

The term "Parents" within this Decision refers to Mother and Father collectively. However, only Mother brought this action. Therefore, the term "Parent," as used in the caption and throughout this Decision, refers to Mother.

Student resided with Parent within Los Alamitos geographic boundaries through her 12th-grade graduation from the Los Alamitos High School on June 4, 2024. At all relevant times in high school, Student was eligible for special education under the primary category of autism, with at different points in time, a noted secondary category of either Other Health Impairment, or Speech or Language Impairment.

Student turned 18 years old shortly before she graduated from high school. At the time of hearing, Student was 19 years old and in her sophomore year at a large public university located on the east coast of the United States. She was living independently in an apartment with a roommate.

This case was filed by Parent on Student's behalf, and by Student, individually. Student was over 18 years old at the time the complaint was filed on March 3, 2025. On November 13, 2025, Parent filed a Notice of Representation which stated Student authorized Parent to represent her in all matters related to her education. In the circumstances of this case, the ALJ construed Parent's filing as Student sharing her educational rights with Parent regarding any claims Parent brought on Student's behalf.

ISSUE 1: DID LOS ALAMITOS DENY STUDENT A FAPE FROM MARCH 3, 2023, THROUGH THE 2022-2023 AND 2023-2024, SCHOOL YEARS BECAUSE IT FAILED TO IDENTIFY, LOCATE AND ASSESS STUDENT IN THE AREAS OF FUNCTIONAL BEHAVIOR, EDUCATIONALLY RELATED MENTAL HEALTH, SPEECH AND LANGUAGE, TRANSITION, EXECUTIVE FUNCTIONING, AND ACADEMICS?

Student contends Los Alamitos was aware Student had disabilities and educational needs in the areas of

- behavior,
- social-emotional functioning and mental health,
- speech and language,
- post-secondary transition,
- executive functioning, and
- academics.

Student further contends Los Alamitos denied Student a FAPE by failing to assess Student in each of these areas between March 3, 2023, through Student's high school graduation on June 4, 2024.

Los Alamitos contends it assessed Student comprehensively in all areas of suspected disability either shortly before or during the period from March 3, 2023, through June 4, 2024. Los Alamitos contends it assessed Student in all areas of

suspected disability and granted all of Parent's requests for assessments either in the nine months before March 3, 2023, or after March 3, 2023, through Student's graduation.

STUDENT'S BACKGROUND

Student was first found eligible for special education when she was three years old under the category of speech or language impairment due to a communication fluency disorder. By March 3, 2023, Student had been medically diagnosed with autism, attention deficit hyperactivity disorder, and an anxiety disorder. She attended Los Alamitos schools, only, from kindergarten through high school, so its special education staff was very familiar with Student's special needs and strengths by the time she was in high school. During this time, Los Alamitos conducted multiple comprehensive three-year reevaluations of Student, as well as other assessments when they were requested by Parents, or when they were recommended by independent assessors. Over the 13 years Student was enrolled in Los Alamitos, Student was assessed multiple times in the areas of

- psychoeducation,
- academics,
- social-emotional,
- speech and language,
- behavior,
- transition, and
- occupational therapy.

Student graduated from Los Alamitos High School on June 4, 2024. Student attended all four years of high school at Los Alamitos High School. At the time of Student's high school graduation, her last consented to IEP, dated March 16, 2023, indicated she was eligible for special education under the primary category of autism, and secondary category of speech or language impairment. A year earlier, when Student was in 10th grade, her February 17, 2022 IEP, developed on multiple days including June 6, 2022, indicated her secondary eligibility was other health impairment due to her attention deficit hyperactivity disorder. Even though Student's secondary eligibility was revised in the March 16, 2023 IEP to speech or language impairment due to her mild to moderate stutter and pragmatics deficits in social situations, Student continued to have attention deficits during 11th and 12th grades. Student took prescription medication to address her attention deficit hyperactivity disorder.

Before graduating from high school in June 2024, Student's last three-year reevaluation was completed and three-year IEP review was completed on June 6, 2022, when she was in 10th grade. Therefore, if Student had not graduated in June 2024, her next three-year reevaluation and IEP review would have been due in June 2025.

While at Los Alamitos High School, Student demonstrated many capabilities, including above average cognitive aptitude, indicating she could positively transition to a four-year university far from home following her high school graduation, as well as to an independent adult life after college. Student earned excellent grades in high school in academically challenging classes. Almost all the classes Student took at Los Alamitos High School were college preparatory courses. Student demonstrated determination to perform well in school. According to her transcript, she graduated from high school

with a cumulative grade point average of 3.6667, based on a four-point scale being the equivalent of an "A" average. During Student's last semester in high school, she earned a semester grade point average of 3.8571.

Throughout high school, Parent was very supportive of Student and advocated forcefully on Student's behalf for specialized academic instruction, services, and accommodations needed to meet her special needs at school. Parent also advocated strongly for Student to be thoroughly assessed in all areas of suspected disability.

While in high school Student successfully pursued her passion for musical performance by robustly participating in the extremely competitive Los Alamitos choir program. Student took voice and dance lessons outside of school to polish her performance skills. These efforts paid off because in 12th grade Student participated in three separate Los Alamitos choir groups, which she was invited to join after competitive auditions. Student loved participating in choir, even though it required significant time and effort, and sometimes caused her stress.

By 12th grade Student had earned some leadership roles in choir, and she felt successful in it. Student's commitment to choir demanded she devote significant time to it during school days, as well as during evenings and weekends. During certain times of the school year, the choir was engaged in presenting multiple performances, which required time-consuming rehearsals. The choir also engaged in multiple competitions with other high schools, requiring practices. During the 2023-2024 school year, when Student was in 12th grade, her intense devotion to choir required she be scheduled for three of the seven periods each school day in a choir class.

Student was also busy outside of school with private academic tutoring in math and English, and with equine therapy. At times during her last few years in high school, Student also occasionally engaged in private counseling. However, Student often had difficulty developing a relationship with a counselor. During summer breaks from school, Student participated in a "sleep-away" camp. In the summer between 11th and 12th grades, she also participated in a "choir" camp to further polish her musical performance skills.

Student's cognitive ability was in the average to high average range. In general Student was an extremely capable pupil who performed very well academically in high school. However, due to her executive functioning deficits Student often took longer than her neurotypical peers to learn concepts and complete assignments and tests. Between March 3, 2023, through June 4, 2024, Student had accommodations which permitted her extra time to complete assignments and take quizzes and tests. She also had an accommodation to take tests in a separate, quiet environment.

Student also had social skills deficits. She was quite shy, and not savvy with peer social interactions, although some teachers noted she had friends in choir. Student felt uncomfortable asking teachers for academic help in the presence of neurotypical peers because she was sensitive to appearing different from them.

Both Student and Parent had high academic expectations for Student. According to Parent, Student could get overwhelmed and paralyzed when she started assignments, particularly at times when academic and extracurricular demands were high. However, Student's teachers during 11th and 12th grade did not observe Student becoming

overwhelmed and paralyzed at school. They did notice that if Student got distracted during class and a teacher redirected her, Student was usually able to promptly begin or return to her academic tasks.

Throughout middle school and high school Student earned almost all A's and B's in her courses, and just a few C's. Student's final high school transcript was very impressive. Student received only three C's throughout high school. Those C's were in Geometry and Algebra II. Student took many academically challenging classes throughout high school, despite her busy schedule. Those included what was referred to as "A through G classes," which were college preparatory courses required by four-year colleges and universities for admission as a freshman. During 12th grade, Student applied to 16 colleges and was accepted for admission to 14. She was admitted to a university with a farm, which was rare, and appealing to Student because she hoped to eventually become a veterinarian.

EARLY REEVALUATION OF A CHILD ALREADY ELIGIBLE FOR SPECIAL EDUCATION IS ONLY REQUIRED IN CERTAIN CIRCUMSTANCES

School district evaluations of students with disabilities under the IDEA serve the purpose of identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout

the course of the student's educational career. (*Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46540-01, 46,640.)

The IDEA provides for reevaluations, referred to as reassessments in California, to be conducted not more frequently than once a year, unless the parent and school district agree otherwise, but at least once every three years, unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.) [no duty to reassess before the three-year reevaluation was due, even where school district concluded the student's behaviors had worsened and were not being addressed sufficiently by the behavior intervention plan].)

The IDEA does not mandate that a public agency administer additional testing as part of a reevaluation. (See 20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d); see also *Z.B. v. District of Columbia* (D.C. Cir. 2018) 888 F.3d 515, 523 [The IEP evaluation does not always require a school to conduct additional testing.]) The reevaluation of a child with a disability must be sufficiently comprehensive to identify all the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6). A school district must reassess a student in all areas of suspected disability. (34 C.F.R. § 300.304(c)(4).)

However, a parent may not select the assessments for a school district. The types of assessments to be employed in a reevaluation are within the reasonable discretion of the school district. (*Idea Public Charter School v. Belton* (D.D.C., July 19, 2007, No. CIV.05 467 RMC) 2007 WL 2071668; *Mackey v. Board of Education* (S.D.N.Y. 2005) 373 F. Supp.2d 292, 299 [IDEA does not compel a school district to perform every sort of test that would arguably be helpful before devising an IEP for a student.])

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his or her parents. (20 U.S.C. §§ 1414(b)(1) & (c)(3), 1415(b)(3) & (c)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion state law. (20 U.S.C. § 1415(c)(1); Ed. Code, § 56321, subd. (a).) The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) If a parent does not consent to an assessment plan, the school district may request a due process hearing to obtain permission to conduct the reassessment without parental consent by establishing that the assessment is necessary and that it is lawfully entitled to do so. (34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), 56506, subd. (e).)

A school district's failure to assess a child may constitute a procedural violation of the IDEA. (*D.K. v. Abington School Dist.* (3rd Cir. 2012) 696 F.3d 233, 249; see also *Park v. Anaheim Union High School Dist., et.al.* (9th Cir. 2006) 464 F.3d 1025, 1032 [A failure to properly assess is a procedural violation of the IDEA.]) However, a procedural violation results in a denial of a FAPE only if the violation: impeded the child's right to a FAPE;

significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*), superseded in part by statute on other grounds.)

LOS ALAMITOS WAS NOT REQUIRED TO REEVALUATE STUDENT BEFORE SHE GRADUATED FROM HIGH SCHOOL

According to the holding in *Lake Elsinore, supra.*, 678 Fed. Appx. 543, 544, the school district had no duty under 20 U.S.C. § 1414(a)(2) to conduct a reevaluation of M.S. because

- the local educational agency did not determine that reevaluation was necessary,
- M.S.'s parents did not request a reevaluation,
- M.S.'s teachers did not request a reevaluation, and
- fewer than three years had elapsed since the last comprehensive evaluation of M.S.

The Ninth Circuit found the district court erred in holding that Lake Elsinore had a duty to reevaluate M.S. and that the district procedurally violated the IDEA by failing to do so.

The underlying case in *Lake Elsinore* concerned a student who brought an action challenging the school district's failure to identify all the student's disabilities or suspected disabilities, where the student's behaviors had become progressively more aggressive and posed a threat to her health and safety. At a 2011 IEP team meeting, the

parents expressed concern that M.S. had become more aggressive at home and with tutors, and she sometimes attacked strangers in public. M.S. had also begun ripping off her toenails and fingernails, had a one-inch bald spot on her scalp from pulling out her own hair, manipulated her fingers, and violently scratched, pinched, and grabbed people's necks. She also screamed and cursed at random intervals. At a May 2012 IEP team meeting, the parents further noted student exhibited significant echolalia and perseveration and had developed other troubling behavior such as swiping objects off a table and breaking them. At a July 2012 IEP team meeting even the school district concluded the student's behaviors had worsened and were not being addressed sufficiently by the behavior plan that had been in place up until that time. (*M.S. v. Lake Elsinore* (C.D. Cal., July 24, 2015, Case No. 13–CV–01484–CAS (SPx) 2015 WL 4511947, at p. 7.) The district court held that the school district denied Student a FAPE by failing to assess Student's behavior during the period at issue, because Student's functional performance warranted a reevaluation. (*Id.* at p. 8.)

The school district appealed the district's court's ruling and the Ninth Circuit reversed. The Ninth Circuit held the school district had no duty to conduct a reevaluation of the student because

- the local educational agency did not determine that reevaluation was necessary,
- the student's parents had not requested a reevaluation,
- the student's teacher had not requested a reevaluation, and
- fewer than three years had elapsed since the student's last reevaluation.

The Ninth Circuit held the district court erred in holding that the school district had a duty to reevaluate the student under these circumstances, and the school district had not procedurally violated the IDEA by failing to do so. (*Lake Elsinore*, supra, 678 Fed. Appx. at p. 544.)

Here, before graduating from high school in June 2024, Student's last three-year reevaluation and IEP were completed in June 2022, when she was in 10th grade. The evidence regarding the circumstances of that reevaluation was not fully developed, so the ALJ makes these findings based on the existing record.

Student's three-year reevaluation was originally due in Spring 2021. However, Parent wanted further assessments following the completion of the outstanding independent psychoeducational educational evaluation by school psychologist Janice Casteel. The record did not establish when the IEP team reviewed Casteel's report of her independent psychoeducational evaluation of Student. The evidence demonstrated that Casteel conducted a comprehensive evaluation, which included measures in the areas of

- academics,
- behavior, including social skills,
- executive functioning,
- intellectual functioning,
- reading,
- writing,
- visual-motor integration, and
- phonological processing.

As part of Student's three-year reevaluation, Los Alamitos subsequently conducted supplemental evaluations pursuant to an assessment plan dated August 16, 2021, which Parent did not sign until April 27, 2022, covering the areas of social emotional/behavior and post-secondary transition. Los Alamitos reviewed all the evaluations at various IEP team meetings, culminating with an IEP team meeting on June 6, 2022. If Student had not graduated in June 2024, her next three-year comprehensive reevaluation and IEP review would have been due June 6, 2025.

Therefore, unless either a Parent or a teacher requested an assessment, or Los Alamitos determined that an assessment was needed, Los Alamitos was not required to reevaluate Student before she graduated on June 4, 2024. As explained below, Student failed to prove that Parent or teacher requested or that Los Alamitos determined that additional assessments in behavior, social-emotional functioning and mental health, speech and language, post-secondary transition, executive functioning, and academics were needed before her graduation.

ASSESSMENTS

Evidence established that Los Alamitos either conducted or funded, at the minimum, the following special education assessments of Student at times indicated, while she was in high school:

- psychoeducational assessment, May 4, 2021
- assistive technology assessment, May 10, 2021
- educationally related mental health services assessment, June 8, 2022
- transition assessment, September 2022

- educationally related mental health services assessment, February 13, 2023
- functional behavior assessment, May 25, 2023
- speech and language assessment, May 25, 2023
- supplemental assessment addressing a possible specific learning disability in math, December 15, 2023.

Los Alamitos may have administered or funded additional assessments of Student during high school that were not introduced into evidence at hearing.

FUNCTIONAL BEHAVIOR ASSESSMENT

Los Alamitos assessed Student's behavior through Casteel's independent psychoeducational evaluation in 2021, as part of Student's three-year reevaluation completed on June 6, 2022. Los Alamitos school psychologist Kristine Morris conducted a functional behavior assessment of Student in Spring 2023, when Student was in 11th grade. Morris's May 25, 2023 report memorialized those assessment results. Morris conducted the functional behavior assessment after it was recommended by Casteel in her report of the February 2023 independent educational evaluation of Student in educationally related mental health services to address Student's anxiety and attendance problems.

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There was no evidence that either Parents or one of Student's teachers requested another functional behavior assessment for Student between March 3, 2023, and Student's graduation. Moreover, there was also no evidence that Los Alamitos determined another functional behavior assessment of Student was warranted during that period.

Therefore, Los Alamitos was not otherwise required to reevaluate Student in functional behavior between March 3, 2023, and June 4, 2024.

EDUCATIONALLY RELATED MENTAL HEALTH ASSESSMENTS

Los Alamitos school psychologist, Vhenus Belisle, assessed Student in educationally related mental health services in Spring 2022, when Student was in 10th grade, resulting in a June 8, 2022 report. Belisle conducted the assessment to determine Student's educational needs in social-emotional and behavioral functioning. Subsequently, Parent requested Los Alamitos fund an independent educationally related mental health services evaluation to be conducted by Casteel, a licensed school psychologist. Los Alamitos granted that request. Casteel assessed Student in the area of educationally related mental health services when Student was in 11th grade, in February 2023.

There was no evidence that either Parents or one of Student's teachers requested another educationally related mental health services assessment, aside from the two assessments mentioned above, between March 3, 2023 and June 4, 2024, when Student graduated from high school. Moreover, there was no evidence that Los Alamitos determined a third assessment of Student in educationally related mental health services was warranted during that period.

Therefore, Los Alamitos was not otherwise required to reevaluate Student in social-emotional and behavioral functioning, and in educationally related mental health services between March 3, 2023, and June 4, 2024.

SPEECH AND LANGUAGE ASSESSMENT

In Spring 2023, when Student was in 11th grade, Los Alamitos speech-language pathologist, Megan Eide, assessed Student in speech and language. At that time, per Parents' request, Student had not participated in IEP offered speech and language services for a number of years. Parent opined that the group speech services provided in middle school had not served Student effectively because other children in her prior speech therapy groups had cognitive levels far below Student's cognitive level. Parent also thought the speech-language pathologist used strategies too juvenile for Student. Parent testified that the group played "baby games" during speech therapy sessions and were a waste of Student's time at school.

Based upon Casteel's findings in her February 13, 2023 educationally related mental health services assessment report, the IEP team recommended a speech and language assessment. Student had pragmatics deficits effecting her conversational skills. At the March 31, 2023 IEP team meeting, Los Alamitos offered Parents an assessment plan for a speech and language assessment, limited in scope per Parent's request, to establish Student's areas of need in fluency and social language. Parent provided written consent that same day. Los Alamitos speech and language pathologist, Eide, conducted the assessment in April 2023.

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The evidence did not demonstrate that either Parents or a teacher requested any further speech and language assessments for Student between March 3, 2023, and June 4, 2024. Los Alamitos had not determined another speech and language assessment of Student was warranted during that time period.

Therefore, Los Alamitos was not required to reevaluate Student in the area of speech and language between March 3, 2023, and June 4, 2024.

TRANSITION ASSESSMENT

Sometime before September 2022, Parent requested an independent educational evaluation in transition be conducted by Gary Greene, Ph.D. Parent requested the independent educational evaluation in transition because she believed Los Alamitos would not do a good job on its own transition assessment of Student for reasons not explained at hearing. Los Alamitos agreed to Parent's request, even though it had not yet conducted a formal transition assessment of Student. Greene conducted that assessment in September 2022.

The evidence did not demonstrate that either Parents or one of Student's teachers requested another transition assessment for Student between March 3, 2023, and June 4, 2024. There was also no evidence Los Alamitos determined an additional transition assessment of Student was warranted during that time period.

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Moreover, case manager, Damien Smith conducted multiple informal assessments of Student beginning in 2021, through Student's 12th-grade year, by giving her questionnaires and surveys to determine her educational and occupational post-secondary preferences.

Therefore, Los Alamitos was not otherwise required to reevaluate Student in the area of transition between March 3, 2023, and June 4, 2024.

EXECUTIVE FUNCTIONING ASSESSMENT

Casteel assessed Student's executive functioning in her 2021 independent educational evaluation in 2021 as part of Student's three-year reevaluation, which was completed and the report thereof was reviewed by the IEP team by June 6, 2022. The evidence did not demonstrate that either Parents or a teacher requested another executive functioning assessment for Student between March 3, 2023, and June 4, 2024. There was also no evidence Los Alamitos determined another executive functioning assessment of Student was warranted during that time period.

Therefore, Los Alamitos was not required to reevaluate Student in executive functioning between March 3, 2023, and June 4, 2024.

ACADEMIC ASSESSMENT

Casteel also evaluated Student's academic needs in her 2021 independent psychoeducational evaluation. Further, in Fall 2023, when Student was in 12th grade, Parent requested Student be given an assessment to determine if Student had a specific learning disability in math, which Los Alamitos granted.

Los Alamitos school psychologist Morris conducted that assessment in the Fall semester of the 2023-2024 school year. That report concluded Student did not meet eligibility requirements for specific learning disability in math.

There was no evidence that either Parents or a teacher requested an academic assessment for Student between March 3, 2023, and June 4, 2024, other than Parent's request in Fall 2023, for an academic assessment to determine if Student had a specific learning disability in math. There was also no evidence that Los Alamitos determined an additional academic assessment of Student was warranted during the time period at issue.

Therefore, Los Alamitos was not required to conduct additional academic evaluations of Student between March 3, 2023, and June 4, 2024.

To summarize, when Student graduated from high school on June 4, 2024, fewer than three years had elapsed since Student's last three-year reevaluation had been completed on June 6, 2022. Neither Parents, nor any of Student's teachers requested an additional assessment of Student in the areas at issue here from March 3, 2023, through June 4, 2024, that Los Alamitos had not already conducted. Los Alamitos had also not determined that an assessment of Student in those areas was needed, apart from the assessments that were completed. Therefore, Los Alamitos was under no obligation to further assess Student in the areas contested during the period at issue.

Consequently, Student failed to meet her burden of proof that Los Alamitos denied her a FAPE by failing to assess Student in functional behavior, educationally related mental health, speech and language, transition, executive functioning, or

academics, from March 3, 2023, through June 4, 2024. Lastly, it was not necessary for Los Alamitos to “identify and locate” Student as a child needing special education because Student was continuously eligible for special education since May 2010.

Student failed to prove she was denied a FAPE due to Los Alamitos’s failure to assess Student in the areas of functional behavior, educationally related mental health, speech and language, transition, executive functioning, or academics, from March 3, 2023, through the end of the 2023-2024 school year.

Los Alamitos prevailed on Issue 1.

ISSUE 2: DID LOS ALAMITOS DENY STUDENT A FAPE FROM MARCH 3, 2023, THROUGH THE 2022-2023 AND 2023-2024 SCHOOL YEARS BY OFFERING LEGALLY INSUFFICIENT SERVICES, AND SUPPORTS AND GOALS IN THE AREAS OF SPECIALIZED ACADEMIC INSTRUCTION, MENTAL HEALTH, SPEECH AND LANGUAGE, AND TRANSITION?

Student contends that both the March 16, 2023 IEP and March 28, 2024 IEP, failed to offer her sufficient specialized academic instruction. Student contends Los Alamitos should have filed a request for due process hearing with OAH when Parents did not consent to Student receiving 275 minutes per week of specialized academic instruction through the offered Academic Lab class if Student needed that service for a FAPE. Student also contends Los Alamitos’s offer of specialized academic instruction through the Academic Lab class was inappropriate for Student because Student was not inclined to ask for academic help in front of other pupils.

Student further contends Los Alamitos failed to offer Student sufficient related services, supports, and goals, in mental health, speech and language, and transition. Student contends the goals Los Alamitos offered were inappropriate because they were vague, included inaccurate baselines, and were not measurable.

Student further contends Los Alamitos should have offered Student an English class for 12th grade that was co-taught by a special education teacher and a general education teacher.

Los Alamitos contends its offer of services, supports, and goals in the areas of specialized academic instruction, mental health, speech and language, and transition in the IEPs dated March 16, 2023, and March 28, 2024, were appropriate and legally sufficient to meet Student's educational needs.

Los Alamitos contends it was not obligated to file a request for due process hearing when Parents did not consent to the offer of Academic Lab in the March 16, 2023 IEP because the IEP team reasonably determined Student could make progress on her goals, even without taking advantage of the specialized academic instruction provided through that class. Los Alamitos further contends Student accessed her education and made progress on her goals, and received excellent grades, throughout the applicable time period, which established that the March 16, 2023 IEP was appropriate.

Los Alamitos contends that the speech and language services, and the educationally related mental health services offered in the March 16, 2023 IEP and March 28, 2024 IEP were appropriate to meet Student's social-emotional and communication needs. Los Alamitos contends that the offered speech and language

services, and mental health services were available to Student, but Student elected to reduce those services by 50 percent one week into the 2023-2024 school year, and that Parent revoked consent to implementation of those services altogether from December 15, 2023, at the latest, through May 14, 2024.

AN IEP MUST REASONABLY ADDRESS A CHILD'S NEEDS BY
OFFERING A PROGRAM WHICH ALLOWS THE CHILD TO ACCESS
THE CURRICULUM

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, 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 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew F.*))

The IEP is a written document for each child with a disability which includes a statement of the child's present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) An IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the pupil. The IEP must also describe the program modifications or supports which school personnel will provide to enable the child to advance appropriately toward attaining his annual goals.

The program and supports outlined in an IEP should enable a child to be involved and make progress in the regular education curriculum. The program, services and supports offered in an IEP should empower the child to also participate in nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).)

In developing the IEP, the IEP team must consider

- the strengths of the child,
- the concerns of the parents for enhancing the education of their child,
- the results of the initial or most recent evaluation of the child and
- the academic, functional, and developmental needs of the child.

(20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop annual goals based upon the child's present levels of academic achievement and functional performance. (Ed. Code, § 56345, subd. (a)(2); *Letter to Butler, United States Dept. of Education Office of Special Education and*

Rehabilitative Services (OSERS) March 25, 1988.) The IEP team is required to review a child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The team must also at least annually revise the IEP as appropriate to address

- any lack of progress toward the child's annual goals,
- the results of any reevaluation,
- information provided by the parents,
- the child's anticipated needs, and
- other matters. (20 U.S.C. § 1414(d)(4)(A).)

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. (*See Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrman*).) An IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*)

Related services are those supportive services required to assist a child with a disability to benefit from special education. (34 C.F.R. § 300.34(a), Ed. Code § 56363(a) [in California, related services are also called "designated instruction and services"].) The IEP team determines when a child needs related services. (Cal. Code Regs., tit. 5 CCR

§ 3051, subd. (a)(2).) California Education Code, § 56363,(b) expressly identifies multiple areas in which related services may be needed. Included in that list are the areas of language and speech development, and counseling.

No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. (*Ibid.*) A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with her abilities. (See e.g., *M.P. v. Poway Unified School Dist.* (S.D.Cal. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759, at p.11.)

When a child is fully integrated in the regular classroom, an IEP typically should provide a level of instruction reasonably calculated to permit advancement through the general curriculum. "[A]s a result of *Endrew F.*, each child's educational program must be appropriately ambitious in light of his or her circumstances, and every child should have the chance to meet challenging objectives." (*Questions and Answers (Q & A) on U.S. Supreme Court Case Decision Endrew F. v. Douglas County School Dist. RE-1*, U.S. Department of Education. The *Endrew F.* standard addresses the amount of progress an IEP must be designed to enable a child to receive a FAPE. It does not guarantee a certain level of progress. (See, e.g., *Johnson v. Boston Public Schools* (1st Cir. 2018) 906 F.3d 182 [Given a child's significant skill deficits when he started and the parent's resistance to the district's program, that progress was sufficient to comply with the *Endrew F.* standard.])

Courts have held that a school district is not required to acquiesce to parent's preference to provide a child with a program that the parent considers to be better. (See *Bradley v. Arkansas Dept. of Education*, 443 F.3d 965 (8th Cir. 2006) [noting that the IDEA doesn't require a district to implement parental preferences, so long as the IEP offers FAPE].) According to a well-worn analogy from the Sixth Circuit Court of Appeals, a FAPE does not require a "Cadillac." Rather, it requires a "Chevrolet." (*Doe v. Board of Education of Tullahoma City Schools*, (6th Cir. 1993), *cert. denied*, 511 U.S. 1108 (1994).)

Under the IDEA there is no entitlement to the "best" program. (See *Rowley*, *supra*, 458 U.S. at p. 204 [The IEP "should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade"].); *Lachman v. Illinois State Board of Education* (7th Cir. 1988) 852 F.2d 290, 297 [*Rowley* and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child].

During the applicable period Los Alamitos offered Student two IEPs, dated March 16, 2023 and March 28, 2024, subject to analysis under Issue 2. Parent consented to the March 16, 2023 IEP on August 4, 2023, with exceptions, shortly before the beginning of Student's 12th-grade year. The evidence did not demonstrate that Parents or Student ever consented to the March 28, 2024 IEP.

OFFER OF A FAPE IN THE IEP DATED MARCH 16, 2023

Student's IEP team met for the purpose of conducting an annual IEP review during 11th grade on March 16, 2023. That IEP was developed over three IEP team meetings held on March 16 and 31, and May 25, 2023. That IEP conveyed an offer of a

FAPE for the period through March 15, 2024, except, for the specialized academic instruction provided through Student's 11th-grade co-taught English class, which was offered until June 7, 2023, the last day of the 2022-2023 regular school year.

The March 16, 2023 IEP offered Student:

- eight goals in areas addressed below
- 24 accommodations
- 275 minutes per week in specialized academic instruction provided through the Academic Lab class
- 50 minutes per day of specialized academic instruction in the co-taught 11th-grade English class until June 7, 2023
- 45 minutes per week of individual educationally related mental health counseling services to support social-emotional goals
- individual speech and language services for one 45-minute session per week until the beginning of the 2023-2024 school year
- individual speech and language services for two 45-minute sessions per month from the beginning of the 2023-2024 school year until the next annual IEP review
- behavior intervention consultation service to support the educationally related mental health service provider, teachers, and IEP team members, for 120 minutes a year

On August 4, 2023, Parent agreed to the implementation of the eight offered goals and offered services in speech and language, educationally related mental health services, and specialized academic instruction consultation. Parent did not consent to implementation of the specialized academic instruction offered through the Academic Lab class.

At the March 16, 2023 IEP meeting the team noted Student's medical diagnoses of autism spectrum disorder and attention deficit hyperactivity disorder impacted her educational performance. Both independent assessors, Casteel and Greene, attended the meeting virtually. Casteel presented her February 13, 2023 report on her independent educationally related mental health services evaluation. Greene presented his September 2022 report of his independent transition evaluation. Parent had requested that the team wait to discuss both Greene's and Casteel's independent evaluation reports during the same IEP meeting.

Parent informed the team she would not consent to the offer of 275 minutes per week of specialized academic instruction to be provided in the Academic Lab class. After that, the IEP team encouraged Student to seek individualized academic help after school, sometimes referred to as seventh period, at the Griffin Lab where one-to-one and small group teacher support was available to all students, not just those with IEPs. However, Student did not take advantage of the Griffin Lab, but the evidence did not establish why, other than because she was very busy with other activities after school.

The IEP team considered offering Student educationally related mental health services for 30 minutes a week. However, Parent requested an increase to 45 minutes per session instead. The team agreed to Parent's request. Parent verbally consented

to the services only if they were provided by an educationally related mental health services counselor, not by a school psychologist. However, written consent is required before a school district can implement an IEP. (Ed. Code, § 56021.1, subd. (b); 34 C.F.R. § 300.9(b). Parent did not provide her written consent to implementation of the March 16, 2023 IEP until August 4, 2023.

Following review of the two independent evaluations and the recommendations made therein, the team offered Parents an assessment plan for speech and language and functional behavior because those further assessments were recommended by the independent assessors. Parent gave her written consent to that assessment plan at the meeting.

The team offered Student an individual transition plan. Student's post-secondary goal was to attend a four-year university outside of California. Student was on track to graduate in June 2024. The team noted Student had taken, and was planning on taking in 12th grade, the "A through G" classes, which were required for her admission to four-year colleges.

The IEP team developed and offered Student eight proposed goals to be reached by Student by March 15, 2024, in the following areas of need:

- written response to literature
- social/emotional problem solving–anxiety
- executive functioning on task/work completion
- fluency: feelings
- social communication

- fluency/stuttering: strategies
- school anxiety/attendance
- pre-vocational

The team then developed and offered Student the following 24 accommodations:

- assignments broken into smaller tasks with frequent checks by teacher with specific steps to ensure Student knows expectations and how to do the task;
- flexible seating (close to board, strategic seating, close to teacher, with a supportive peer);
- provide instruction in both visual/auditory formats;
- use of thinking map or graphic organizer to be used on writing assignments;
- provide copies of work samples (such as homework and completed quizzes);
- provide teacher resources (notes/power points/study guides) to prepare for exams;
- use of personal device to take a picture of assignments on board;
- access to locker if student forgets a book needed for class;
- locker at the end of a row;
- additional time on tests (up to 1.5 times the allotted amount);
- alternative options for earning points when in collaborative groups;

- additional time for assignments after the due date or up to one week after the original due date (with exception per choir practice and performance schedule);
- reduced amount of online based practice work;
- teacher to prime for participation when transitioning into peer groups;
- scaffolding in participation to share with partner or small group prior to sharing in front of the entire class;
- scaffolding writing assignments by chunking steps in the writing process with specific due dates (for introduction, body paragraphs, and conclusion);
- check for understanding on assignment instructions and lesson content;
- access to counseling office, psychology office, or well space as needed for mental health breaks;
- testing in a separate setting;
- allow use of note card for tests, use of her notes for final exams, preapproved by teacher prior to use;
- allow extra time for responding due to Student's stutter;
- class presentation to small group of selected peers and/or teacher;

- refraining from calling on Student to read aloud or answer questions in class unless she volunteers; and
- pull-out services to the best of district's ability, to have minimal interruptions on academic classes.

The above listed extensive accommodations were offered to Student because she was taking general education classes. The IEP team determined Student did not require program modifications in her general education classes or other education related settings. The IEP team also decided neither Student, nor school personnel working with Student, required additional supports in implementing the IEP.

At the end of the third IEP team meeting held on May 25, 2023, the IEP team offered Student the following special education, related services, and supports, as well as the 24 accommodations and eight goals in the areas mentioned above:

- specialized academic instruction for 275 minutes weekly, to be provided in a group special education setting in the Academic Lab class from February 16, 2023, to February 15, 2024.
- specialized academic instruction for 50 minutes daily to be provided in a group setting in an English III class co-taught by a general education teacher and a special education teacher to be provided through June 7, 2023, the last day of the 2022-2023 school year.
- specialized academic instruction consultation to help facilitate Student's assignment completion, for 60 minutes monthly from February 16, 2023, through February 15, 2024.

- individual educational mental health counseling services to support social-emotional goals to be provided individually for 45 minutes weekly from March 31, 2023, to February 15, 2024. However, as discussed below, in August 2023, this service was reduced to 45 minutes every other week at Parent's and Student's request. Parent eventually revoked her consent to this service altogether from about December 15, 2023, through May 14, 2024.
- language and speech services to be provided individually for 45 minutes weekly from May 25, 2023, through the first day of the 2023-2024 regular school year. Language and speech services to be provided individually for 45 minutes twice a month from the first day of the 2023-2024 regular school year, through the next annual IEP review meeting. However, as discussed below, in August 2023, this service was reduced to 45 minutes every other week at Parent's and Student's request. Parent eventually revoked her consent to this service altogether from December 15, 2023, at the latest, through mid-May 2024.
- behavior intervention consultation services to the educationally related mental health counseling service provider, teachers, and IEP team, for 120 minutes yearly from May 25, 2023, through March 16, 2024. The comments in the service grid of the IEP indicated consultation service minutes were "flexible based on need."

Extended school year was not offered. The IEP required Los Alamitos to inform Parents of Student's progress once each semester through a progress summary report.

AUGUST 22, 2023 IEP TEAM MEETING

Student began her senior year at Los Alamitos High on August 14, 2023, the first day of the 2023-2024 regular school year. By the end of the first week of school Student was stressed with the demands of her schedule. Her French IV class and math class were challenging for her. At that time her class schedule included two periods each day for choir. An IEP team meeting was held on August 22, 2023, to address Student's concerns.

Student told the IEP team the two periods a week she had to spend in speech and language and educationally related mental health services caused her stress. Parent and Student requested a 50-percent reduction in the time allotted for each of the two services. The IEP team agreed Student's goals in the two service areas could be sufficiently addressed in sessions held every other week, rather than once a week. Therefore, the entire IEP team, including Parent, agreed to Student's request for a 50-percent reduction of time for those services. The fact that Parent and Student sought a reduction in the amount of speech and counseling undercuts an argument that the amount of these services offered in the March 16, 2023 IEP was insufficient.

About a month into the 2023-2024 school year Student was invited to join the Los Alamitos Expressions acapella choir. Student wanted to accept this invitation to a third choir group, which required a revision to her class schedule to provide for choir during three periods each school day. The IEP team met again on September 26, 2023, to address Student's desire to participate in a third choir, and the change in Student's

schedule that would be required. To accommodate Student's participation in the additional choir group Student's schedule was revised to provide three periods per school day of choir participation. As a result of Student's extremely busy class schedule, she was not readily available to meet with teachers for specialized academic instruction, specialized academic instruction consultations, or academic help either before school, or during the school day.

Student's unavailability during the school day and refusal to take advantage of specialized academic instruction, educationally related mental health services, and speech and language services offered undercuts Student's position that she was offered insufficient instruction and services in those areas.

TESTIMONY OF CASTEEL, STUDENT'S EXPERT WITNESS

Casteel's testimony was unpersuasive in meeting Student's burden of proof on Issue 2. Casteel, an extremely experienced school psychologist, assessed Student twice in independent educational evaluations funded by Los Alamitos. Casteel's first assessment of Student was a comprehensive psychoeducational evaluation completed in May 2021, discussed in Issue 1. Casteel's second independent educational evaluation of Student was in the area of educationally related mental health services, administered in January and February 2023, when Student was in 11th grade. Those independent evaluations of Student were discussed in the analysis of Issue 1 in this Decision.

Casteel's second assessment of Student recognized her anxiety and need for counseling services, as well as her social skill deficits. Student was very self-conscious about her special needs in the presence of her neurotypical peers, even though Student performed very well academically in her general education classes. While testifying

Casteel did not opine about the sufficiency of the March 16, 2023 IEP. Casteel also did not opine that Student should have been offered specialized academic instruction, services, supports, or goals, that were not offered in the March 16, 2023 IEP.

Casteel testified it was necessary to collect data on Student's present levels of performance for two weeks before drafting accurate baselines on proposed goals. According to Student's case manager, Smith, he did just that. Smith collected data on Student's performance for two weeks to ascertain Student's accurate baselines of her present levels of performance before drafting proposed goals in Student's various areas of need for the March 16, 2023 IEP. Student took the position that data should have been constantly collected on Student's performance, rather than for just a two-week period. Student's position is not only contrary to her own expert's opinion, but unrealistic and not required under the law, as discussed further in Issue 4 below.

In Casteel's independent educationally related mental health services evaluation report she recommended Student be given goals to reduce her anxiety and depression. Casteel gave an example of such a goal, which closely tracked a proposed goal in the areas of social-emotional problem solving offered in the March 16, 2023 IEP. Casteel also recommended a functional behavior assessment, which Los Alamitos' school psychologist Morris administered to Student in Spring 2023, and reported on at the May 25, 2023 IEP team meeting.

In Casteel's independent educationally related mental health services evaluation report she also recommended the team consider increasing Student's counseling services and that the counselor should consider using cognitive behavioral therapy strategies with Student. At the March 16, 2023 IEP team meeting, Parent agreed with Casteel about increasing Student's educationally related mental health services from 30

minutes per week to 45 minutes per week. The IEP team followed Casteel's recommendation and offered educationally related mental health services for 45 minutes per week.

Casteel also recommended Student receive services from a speech-language pathologist in a group setting to work on Student's deficits in pragmatics. As a result, the IEP team recommended a speech and language assessment, which Los Alamitos' speech-language pathologist Eide administered in Spring 2023. Eide reported on those assessment results at the May 25, 2023 IEP team meeting.

Casteel recommended the following to address Student's social communication and attention needs:

- giving specific instructions
- breaking multi-step instructions into smaller chunks
- giving instructions for only one assignment at a time
- providing extra time to process information
- having teachers check with Student for understanding
- extending time for completing certain assignments
- when providing information being conscious of distance from Student
- maintaining visual contact with Student when talking
- providing flexible seating

- minimizing classroom distractions
- pairing auditory information with other modalities
- providing breaks or changing activities

Neither Greene, nor Casteel, attended the second or third IEP team meetings held to complete the development of the March 16, 2023 IEP. Greene did not testify at hearing. Casteel testified she was not familiar with the March 16, 2023 IEP when asked about it. The IEP team followed recommendations in the report made by Casteel for Student's IEP when it developed the March 16, 2023 IEP. Casteel testified a study skills class would be helpful for Student and that Student would benefit from one-to-one academic help, both of which would have been available to Student in the Academic Lab class, as discussed below.

AN IEP MUST INCLUDE APPROPRIATE MEASURABLE GOALS

An annual IEP must contain a statement of measurable annual goals designed to meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) The purpose of goals is to permit the IEP team to determine whether the pupil was making progress in an area of need. (*Id.*; see also, *Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities*, 64 Fed.Reg. 12406-01, 12,471.) The IDEA does not require a statement

of quantifiable baselines when addressing a child's present level of performance. (*A.G. v. Paso Robles Joint Unified School Dist.* (9th Cir. 2014) 561 Fed. Appx. 642, at 644, (unpublished) *aff'g*, Cent. Dist. Case No. 11-08814, *aff'g* OAH Decision, Case No. 2011020014.)

The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-cv-01873-JMC) 2011 WL 3882850, at p. 6.) The achievement of goals and objectives is only one measure of educational benefit. In the instant case Student's achievement of excellent grades in college preparatory high school classes was extremely strong evidence that Student made significant progress during 12th grade.

OFFERED GOALS IN THE MARCH 16, 2023 IEP STUDENT CHALLENGED AS INAPPROPRIATE OR NOT MEASURABLE

Student claimed that out of the eight annual goals offered in the March 16, 2023 IEP, all but one goal, Goal 6, was inappropriate. Each of the seven challenged goals are addressed below.

Goal 1 in the area of "Written Response to Literature" stated: by 3/15/2024, given an assigned topic and a writing sample or frame, Student will compose a multi-paragraph or multi-page essay, with a clear thesis statement, and focus on structures that follows the outline expectations, and a maximum of one teacher edit (increased independence) with an average of 80% accuracy on class assigned writing assignments as measured by work samples.

Student argues annual Goal 1 is too vague because it did not specify the number of paragraphs, and the number of sentences within each paragraph that Student was required to write. Case manager Smith persuasively testified that the purpose of this goal was to increase Student's ability to independently revise her own written work. Moreover, according to the IEP notes, the length of the written assignment was based upon the rubric, or scoring guide, for each specific writing assignment.

Student also argues the baseline was vague. This assertion is incorrect, as the baseline noted Student's current written drafts were typically 65-percent to 75-percent accurate in structure, content and mechanics. This was a sufficiently specific description of Student's applicable baseline skills.

Student failed to prove Goal 1 was either too vague, not measurable, or based on an inappropriate baseline, such that it denied her a FAPE. Goal 1 was appropriate for Student.

Goal 2 in the area of "Social/emotional problem solving – anxiety" stated: by 3/15/2024, when in counseling and the classroom setting Student will practice and utilize five ways to decrease personal anxiety associated with school activities and peer interactions with 100 percent accuracy in two out of three trials over a one month period as measured by interview, data collection, and/or teacher observations.

Student argues that the baseline for this goal was inaccurate, it did not identify techniques Student should use to decrease anxiety, and it was not measurable. However, Student presented no persuasive evidence that the baseline was inaccurate. The techniques Student would use were determined by the educational specialist and

service provider working on the goal with Student. Lastly, the goal was measurable as it clearly required Student to use the anxiety decreasing techniques with 100 percent accuracy in two out of three trials over one month.

Student failed to prove Goal 2 was not measurable or based on an inappropriate baseline such that it denied her a FAPE.

Goal 3 in the area of "Executive functioning, on-task/work completion" stated: by 3/15/2024, when given a task or direction for a non-preferred activity Student will begin the task immediately, will self-advocate (ask for assistance) if needed, remain on task for the completion of the assignment with no task avoidance (using phone, closing laptop, leaving, etc.) and no more than two prompts on nine out of 10 independent tasks throughout the school day, as measured by teacher feedback and data.

Student argued that the baseline was vague, and it was not measurable because it was impossible to know when Student should have asked for help but did not. The baseline of Goal 3 was sufficiently specific as it stated Student was on task 80 to 85-percent of the time and she could be redirected to return to task with no more than two prompts. The goal was measurable in that it relied upon teacher feedback, which is a reasonable way to assess Student's progress in this area.

Student failed to prove Goal 3 was not measurable or based on an inappropriate baseline such that it denied her a FAPE. Therefore, Goal 3 was appropriate for Student.

Goal 4 in the area of "Fluency- feelings" stated: by 3/15/2024 Student will increase her positive communication attitudes as evidenced by at least one of the following: increase Speech Satisfaction 10-point rating scale score, and/or completion of sections or the entire Overall Assessment of the Speaker's Experience of Stuttering, commonly

referred to as the "OASES," compared to her initial evaluation/rating on the OASES as measured by Student input on rating scales given by the speech-language pathologist during each semester.

According to Los Alamitos' speech-language pathologist Eide, the OASES is a standardized instrument that measures the impact of stuttering on a person's life. The resulting score on the OASES measures the stuturer's satisfaction with her own verbal communication skills.

Student argued the baseline was vague and the goal was not measurable. This goal was intended to improve how Student felt about her speech because she had a slight stutter. Student offered no persuasive evidence that the baseline was inaccurate. The goal was measurable through Student's scores on the Speech Satisfaction 10-point rating scale score and/or on the entire OASES instrument that the speech-language pathologist administered periodically to Student. Moreover, speech-language pathologist Eide, who developed Goal 4 persuasively testified Goal 4 was appropriate for Student. Student failed to prove Goal 4 was not measurable or based on an inappropriate baseline such that it denied her a FAPE.

Therefore, Goal 4 was appropriate for Student.

Goal 5 in the area of "Social Communication" stated: by 3/15/2024, during structured speech and language sessions, given pictured social scenes, videos, or discussions of naturally occurring interactions as reported by Student, she will (1) expressively label at least two different perspectives from scenarios by describing their thoughts ("What were they thinking?") and/or feelings ("How do you think they feel?"), and (2) expressively label non-verbal communication related to different perspectives

(e.g., body language, tone of voice, facial expression, etc.) in 80-percent of opportunities across two consecutive sessions per semester as measured by therapist data and/or observation.

Student argued the baseline was vague and the goal was not measurable. Student offered no persuasive evidence that the baseline was inaccurate. Furthermore, this goal was measurable based on data collected by the speech therapist and by the speech therapist's observation of Student's ability to understand the perspectives of others. Eide, who developed Goal 5, convincingly testified based on her extensive experience and her knowledge of Student's communication deficits, that it was appropriate for Student. Student failed to prove Goal 5 was not measurable or based on an inappropriate baseline such that it denied her a FAPE.

Therefore, Goal 5 was appropriate for Student.

Goal 7 in the area of "Anxiety/attendance" stated: by 3/15/2024, Student will work in counseling sessions to reframe negative thoughts and decrease the amount of time spent getting into school in the morning as evidenced by on time attendance to the first period of the day on 10 out of 10 days.

Student argued that the baseline was vague because it failed to state how many of her absences were excused, versus unexcused, and because it failed to identify the dates within the baseline time period that Student was absent or tardy 31 times. Student's argument that the baseline was vague was not convincing. The intention of this goal was to encourage Student's timely attendance to her zero-period class, meaning the class before the beginning of the regular school day. The baseline stated Student was late to her first class five out of 10 days from May 11, 2023, through

May 24, 2023. There was no persuasive evidence that the baseline was vague simply because it failed to identify whether Student's prior absences were excused or unexcused, and the specific dates Student had been absent or tardy in the past. Goal 7 was appropriate for Student, based upon the convincing testimony of educationally related mental health services provider Weiss-Wright, who developed it.

Student failed to prove Goal 7 was based on an inappropriate baseline such that it denied her a FAPE. Therefore, Goal 7 was appropriate for Student.

Goal 8 in the area of "Pre-vocational" stated: by 3/15/2024, Student will independently monitor her tasks by completing the majority of her classwork/homework (including make-up assignments) and seek out additional supports (e.g. Griffin Lab, lunch/after-school lab, teacher's help, etc.) to result in earning B's (80-percent or above) in each core class as measured by AERIES gradebook records. AERIES is a virtual program available to parents, students and teachers that keeps track of whether a child turned in all their class work assignments, and grades received on assignments and tests.

Student argues that the baseline failed to contain useful information because it was based on the number of missing assignments Student had on May 24, 2023, and that the grades Student earned on assignments were not relevant. Neither of those two arguments were persuasive. Both the number of Student's missing assignments and

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grades on her assignments, captured as a snapshot on a specific date, were useful information for this goal. Goal 8 was measurable and appropriate for Student because she sometimes failed to turn in all her assignments.

Student failed to prove Goal 8 was based on an inappropriate baseline such that it denied her a FAPE.

Each of the seven annual goals offered in the March 16, 2023 IEP that Student challenged as insufficient were appropriate. Moreover, as addressed below Student did not require any other goals to receive a FAPE in the March 16, 2023 IEP.

STUDENT CONTENDS SHE SHOULD HAVE BEEN OFFERED GOALS IN ADDITIONAL AREAS IN THE MARCH 16, 2023 IEP

In response to the ALJ's request, Student submitted a written list to OAH during the hearing identifying the specific goals she challenged. Student's list stated, in addition to the goals in the areas offered in the March 16, 2023 IEP, she should have also been offered goals in the additional areas of:

- reciprocal communication
- social interaction
- appropriate participation in class (working in a group, asking for help/clarification when needed)
- pragmatics
- fluency
- organization

- memory
- transition back to school after breaks
- task initiation and completion
- inserting herself into a group
- working in a group
- transition (filling out applications, making appointments, keeping and balancing a checking account, using public transportation, creating a resume, preparing and following a budget)
- reading comprehension/pulling relevant information out of a test
- time management
- arriving to school on time
- memory/processing

The law is clear that “an IEP is not required to contain every goal from which a student might benefit.” (*Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1132 (*Capistrano*), citing *R.F. by & through E.F. v. Cecil Count Public Schools*. (4th Cir. 2019) 919 F.3d 237, 251.) In *Capistrano*, the parents argued that the IEP was inadequate because its goals were inadequate in that, the goals did not address B.W.’s unique needs, Capistrano did not consider the parents’ expert’s recommendation or the parents’ concerns, and the goals relied on inaccurate data from the prior year and proposed inadequate methods for collecting future data. (*Id.* at p. 1132.) The Ninth Circuit held that the IEP goals were adequate, the goals addressed B.W.’s needs, Capistrano considered parents’ and their expert’s recommendations, and any data problems did not make the goals themselves inadequate. (*Ibid.*)

Here, Student offered no persuasive evidence that she required additional goals in the 16 areas listed above. The eight goals and 24 accommodations offered in the March 16, 2023 IEP, along with the general education curriculum, addressed all the above extra areas in which Student claimed she needed additional goals. Student produced no evidence to the contrary.

Notably, some of the goal areas Student claimed she needed are areas in which all high school students have needs, not just those eligible for special education. For example, Los Alamitos introduced persuasive evidence that it provided significant information about the college search and application process provided to all its high school students through their English classes and at assemblies held for 11th and 12th graders. Also, Los Alamitos subscribed to the Naviance program, an educational data management platform used by many high schools and colleges to facilitate college applications and provide colleges with high school transcripts and other information required of college applicants. Los Alamitos made all students aware of how to use the Naviance program to help them locate and apply to colleges. Student was introduced to these services through her general education English classes, informational assemblies, by her academic counselor, and her case manager. The balance of the other areas in which Student claimed she also needed goals, were sufficiently addressed through the extensive accommodations, listed above, offered to Student.

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Student incorrectly takes the position that Los Alamitos was required to offer Student goals on every educational and functional need Student had. In *Coleman v. Pottstown School Dist.* (E.D.Pa. 2013) 983 F.Supp.2d 543, 573 (*Coleman*), the parents made the same incorrect assumption as Student does here. However, the District Court disagreed and held:

Plaintiffs interpret [§ 1414(d)(1)(A)(i)(II)] as requiring a school district to create measurable goals for every recognized educational and functional need of a student with disabilities. ...[I]t would ... be inconsistent with the longstanding interpretation of the IDEA to find that providing a FAPE requires designing specific monitoring goals for every single recognized need of a disabled student. As noted above, a FAPE is a threshold guarantee of services that provide a meaningful educational benefit, not a perfect education. (*Coleman, supra.*, at pp. 572-573.)

The Court of Appeal affirmed that part of the District Court's decision. (*Coleman v. Pottstown School Dist.* (3d Cir. 2014) 581 Fed. Appx. 141, 147-148 [nonpub. opn].) *Capistrano, supra*, comes to the same conclusion in the Ninth Circuit.

SPECIALIZED ACADEMIC INSTRUCTION PROVIDED IN ACADEMIC LAB CLASS

The Academic Lab class offered to Student in the March 16, 2023 IEP and the March 28, 2024 IEP, which is discussed in more detail below, was essentially a study skills class for pupils with IEPs. The first five minutes of that class were devoted to a short video regarding mastery of a specific study skill. During the 50-minute balance of the class, pupils worked on tasks assigned in their general education classes, did homework,

or studied for tests and quizzes. A credentialed special education teacher taught the Academic Lab class. That teacher was available to give one-to-one and small group specialized academic instruction to students who needed assistance with their academic work. That special education teacher would also collect data on Student's progress.

Student took all general education classes during the applicable time period. The only special education class Student was offered in the March 16, 2023 IEP was Academic Lab, which was never implemented because Parents did not consent to it. The March 16, 2023 IEP team was aware, based on the opinions Parent expressed at past IEP team meetings, that Parent did not want Student to take classes in which only children eligible for special education were enrolled. However, the team thought the Academic Lab class would be helpful for Student because it would afford her the opportunity to both improve her study skills and executive functioning strategies and receive daily academic assistance for one period each school day from a special education teacher. Nonetheless, the March 16, 2023 IEP team believed Student could still make progress without the Academic Lab class.

Smith, Student's case manager, testified that even though the IEP team thought it would be helpful for Student to take Academic Lab, the team believed Academic Lab was not required for Student to receive a FAPE because Student could still make progress on her goals if Parent did not consent to implementation of the Academic Lab class. The outstanding grades Student earned in 12th grade, consisting of 11-A's and 3-B's, support Smith's statement, as Student clearly made significant progress in all her academic classes during the 2023-2024 school year.

ACADEMIC LAB WAS THE LEAST RESTRICTIVE ENVIRONMENT

Los Alamitos offered specialized academic instruction in the Academic Lab class. That class included only students with IEPs, was smaller than a traditional study hall class, and was taught by a credentialed special education teacher. One alternative to Academic Lab was the Griffin Lab, which was a general education voluntary “drop in” after-school program where students received academic help from general education teachers. Since Academic Lab was a class only for children with IEPs, it is necessary to analyze whether the offer of specialized academic instruction in Academic Lab, was the least restrictive environment for Student.

There was also a general education Study Skills class that was a study hall taught by a general education teacher to help students who were behind on earning credits toward high school graduation by independently working on credit remediation. This class would not have been appropriate for Student because it was a large class taught only by a general education teacher. The Study Skills class did not provide specialized academic instruction from a special education teacher. The students enrolled in the general education Study Skills class received credit only when they independently completed curriculum required for credit remediation. Student had participated in the general education Study Skills class during the 2021-2022 school year when Student was in 10th grade, but Parent found that class inappropriate for Student and did not want her to participate in that class again in 11th or 12th grade.

Generally, the appropriate placement option is the least restrictive environment in which the child can be educated. The IDEA requires school districts ensure that children with disabilities are educated alongside their nondisabled peers “[t]o the maximum extent appropriate.” (20 U.S.C. § 1412(a)(5)(A).) School officials may remove a disabled

child from the regular classroom “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (*Ibid.*) This provision reflects the IDEA’s “strong preference” for educating children with disabilities in a regular classroom environment. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834 (*Poolaw*).

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

A four-factor test must be applied to the evidence to determine whether a school district has complied with the least-restrictive-environment requirement. (*Rachel H.* 14 F.3d 1398, 1404) The first and most important factor compares the academic benefits a child receives from placement in the regular classroom with the academic benefits available in a special education classroom. (*Id.* at p. 1400–1401; *Poolaw, supra*, 67 F.3d at p.836.) The second factor considers the non-academic benefits a disabled child derives from being educated in a regular classroom, such as the development of social and communication skills from interaction with nondisabled peers. (*Rachel H., supra*, 14 F.3d at p. 1404; *Oberti v. Board of Education*, 995 F.2d 1204, 1216 (3d Cir. 1993) (*Oberti*); see also *Ms. S. v. Vashon Island School District*, 337 F.3d 1115, 1137 (9th Cir. 2003), superseded by statute on other grounds, 20 U.S.C. § 1414(d)(1)(B).)

The third factor weighs the potential negative effects a disabled child’s presence may have on the education of other children in the classroom or the teacher. (*Rachel H., supra*, 14 F.3d at p. 1404.) The fourth factor considers the costs to the school district of

providing the supplementary aids and services necessary to educate a disabled child in the regular classroom. (*Ibid.*) This four-factor test must be applied to the evidence to determine whether a school district has complied with the least-restrictive-environment requirement. (*Rachel H., supra.*, 14 F.3d 1398, 1404.)

It was clear Student needed specialized academic instruction from a special education teacher regarding improving her study skill techniques and executive functioning strategies. However, Student could not have received the specialized academic instruction she needed in study skills and executive functioning strategies in a general education classroom, unless a special education teacher “pushed-in” to one of Student’s general education classes. A “push-in” model would have been a less restrictive placement for Student for one hour a day, than an Academic Lab class.

However, due to Student’s extreme sensitivity to receiving assistance in the presence of neurotypical peers, Student could not have tolerated having a special education teacher “push-in” to one of Student’s general education classes to assist her with both study skills and executive functioning strategies and to provide her with academic help in the subject. “Push-in” assistance would have been inappropriate for Student because of the likelihood it would have caused Student to suffer extreme anxiety because she was so uncomfortable about appearing to need any academic help in the presence of her neurotypical peers.

Moreover, Student needed to learn to ask for academic help she needed. Student would have been mortified if a special education teacher had “pushed-in” to any of her general education academic classes to provide her with specialized academic

instruction and academic assistance. Student's accommodations even required her teachers not to call on Student in class if she did not volunteer because Student became very anxious if she was not able to correctly respond in front of her neurotypical peers.

According to Parent's testimony Student had no friends at school. However, various Los Alamitos staff members testified Student had friends in choir. Other than in choir, the evidence indicated Student was not socializing with peers in her other general education classes, although she could successfully work in groups with familiar peers. Student was much more likely to ask for help from the Academic Lab class teacher due to the smaller class size than she would have in the presence of her neurotypical peers in one of her general education classes. Parent thought the after-school Griffin Lab would not work for Student because she would not ask for help in the presence of the other general education peers who also went to the Griffin Lab for help. The evidence weighed in favor of supporting Parent's opinion that Student would be uncomfortable seeking academic help in the presence of neurotypical peers at the Griffin Lab.

The next less restrictive option was to provide specialized academic instruction in the Academic Lab class where Student would have received some instruction each day on study skills and executive functioning strategies. In the Academic Lab Student could also get one-to-one help from a special education teacher with her academic work. Student also had to develop the skill to seek help when she needed it. Since others in the Academic Lab class also needed assistance, it was more likely Student would successfully learn how to ask for help in that setting, than in a general education class. Moreover, any "push-in" specialized academic instruction would have likely caused Student extreme anxiety because she would then appear different than the other children enrolled in the general education class.

The third *Rachel H.* factor weighs the potential negative effects a disabled child's presence may have on the education of other children in the classroom or the teacher. (*Rachel H., supra*, 14 F.3d at p. 1404.) This was not an issue in the instant case, as Student was very quiet and not disruptive in any educational setting.

The fourth *Rachel H.* factor considers the costs to the school district of providing the supplementary aids and services necessary to educate a disabled child in the regular classroom. There was no evidence regarding the cost of educating Student in general education classes through the "push- in" model. Moreover, this factor does not appear to be relevant to the present analysis.

Balancing the four *Rachel H.* factors, here, leads to the conclusion that Los Alamitos's offer of specialized academic instruction in the Academic Lab class, constituted the least restrictive environment in which Student could receive the specialized academic instruction she needed.

Therefore, the March 16, 2023 IEP offer of specialized academic instruction for one period per day in the Academic Lab was appropriate for Student.

TRANSITION PLAN OFFERED IN THE MARCH 16, 2023 IEP

Student offered no persuasive evidence that the transition plan, services, supports, and goals offered in the March 16, 2023 IEP were not reasonably appropriate to meet Student's post-secondary planning needs. Parent elected to hire a private college advisor for Student in Fall 2022, more than six months before the March 16, 2023 individual transition plan was offered to Student, and hoped Los Alamitos would reimburse her for the cost of the college advisor. Los Alamitos denied that request.

Parent also requested, and was granted an independent educational evaluation from Greene, which occurred in September 2022, because Parent did not believe Los Alamitos would do a good job administering its own transition assessment.

The IEP in effect when a student reaches 16 years of age must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1); 56345, subd. (a)(8).) The IEP must also offer transition services, including courses of study, needed to assist the student in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including

- post-secondary education,
- vocational education, and
- integrated employment, including
 - supported employment,
 - continuing and adult education,
 - adult services,
 - independent living, or
 - community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,
- development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services may be special education if provided as specially designed instruction, or may be related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

Simply put, the IDEA requires IEPs for older students to include a plan for a coordinated set of services designed to move special education students successfully from high school to post-high school settings. Transition plans help students gain skills they will need when they graduate from high school or age out of special education when they turn 22 years old. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the workforce or continue their education or training. Such services also prepare students to eventually live as autonomously as possible, given the extent of their disabilities.

The adequacy of a transition plan and services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30.)

Moreover, a flawed or missing transition plan is generally regarded as a procedural error. (*Board of Education of Tp. High School Dist. No. 211 v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.)

When a transition plan fails to comply with the procedural requirements, but the individual transition plan or the IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Education* (D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, *10.) Therefore, a transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE.

The March 16, 2023 IEP team reviewed and discussed Greene's independent transition evaluation report and recommendations. The team addressed Student's interests as evidenced by her responses to interest inventories and questionnaires case manager Smith had administered. Student's post-secondary plan was to attend an out of state four-year university and pursue studies and eventually a career in animal science.

The team adopted Greene's recommendations and incorporated them into Student's individualized transition plan and into the March 16, 2023 IEP. For instance, Greene found Student had a high number of capabilities in multiple areas. He also concluded Student was capable of living independently as an adult. Greene did not recommend separate goals in independent living. Therefore, the team did not offer goals in independent living.

Greene's report indicated Student usually did not ask for help when she should. He also noted Student struggled with efficiently managing her time in connection with assignment completion. The team recommended Student address her anxiety and other issues in the counseling services offered.

Greene recommended Student receive instruction on executive functioning skills. He also recommended Student be encouraged to advocate for herself to receive all the accommodations in her IEP. Greene further recommended Student be referred to the Department of Rehabilitation for services when she turned 18 years old in May 2024, which Smith did.

The IEP team linked Student's post-secondary objectives with her annual goals offered in the areas of writing with greater independence, social-emotional problem solving, and executive functioning and self-advocacy. Case manager Smith persuasively testified that Student's post-secondary objectives were sufficiently supported by the specialized academic instruction and the educationally related mental health services offered in the March 16, 2023 IEP.

Smith's testimony made sense because the specialized academic instruction offered through Academic Lab class would have given Student the help she needed in developing effective study skills and executive functioning strategies. The Academic Lab class would have also given Student the opportunity to practice asking for academic help from a teacher in a smaller class setting. Moreover, the educationally related mental health services offered addressed Student's anxiety and social-emotional deficits.

Student's post-secondary transition goal to attend a four-year university following high school graduation was also supported by the college and career exploration activities

offered to all students. Those activities included two one-hour presentations made in Student's English class, her use of Naviance to explore college and career options based on Student's self-reported interests, working with her academic counselor to schedule "A through G" classes required for college admission, and completing requirements to receive an award, referred to as a cord, for completing certain educational requirements in the sports medicine career pathway.

The individual transition plan, services and goals offered in the March 16, 2023 IEP constituted a sufficiently comprehensive individualized program tailored to meet Student's post-secondary goals. The appropriate test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. The transition plan, goals, and services and supports offered in the March 16, 2023 IEP when in their entirety, were reasonably tailored to meet Student's overall transition needs, which was to prepare for and be accepted to a four-year university at which she could study animal science. Also, there was no evidence that the offered individualized transition plan, services, and transition goals in the March 16, 2023 IEP violated any required procedures that resulted in Student losing an educational opportunity.

Student succeeded in reaching her post-secondary goals of being accepted to and attending a four-year university that offered a program in animal science and had its own farm. Therefore, Student did not prove she was denied a FAPE by the failure of Los Alamitos to offer sufficient services and supports in transition. Student also failed to produce evidence supporting her claim that the transition goals, which the team appropriately linked to Student's annual goals for writing with greater independence,

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social/emotional problem solving, and executive functioning/self-advocacy, to Student's post-secondary objectives, and to the specialized academic instruction, and educationally related mental health services offered in the March 16, 2023 IEP, were insufficient.

SUMMARY OF ANALYSIS OF THE SUFFICIENCY OF SERVICES,
SUPPORTS, AND GOALS IN SPECIALIZED ACADEMIC
INSTRUCTION, MENTAL HEALTH, SPEECH AND LANGUAGE,
AND TRANSITION, OFFERED IN THE MARCH 16, 2023 IEP

Student failed to identify specific services and supports she contended should have been offered in specialized academic instruction, mental health, speech and language, and transition. Parent testified she wanted Los Alamitos to provide Student with after-school one-to-one specialized academic instruction to be provided by both a high school general education teacher certified in a specific subject area, such as mathematics, as well as from a special education teacher. Student presented no authority that Los Alamitos was required to provide that after-school service. Moreover, Student also failed to prove she needed such one-to-one instruction in order to make progress.

Parent testified that as part of her March 16, 2023 IEP, Student should have been offered an English class for her senior year that was co-taught by both a general education teacher and a special education teacher. However, Student did extremely well in her English class in senior year. She earned an A in the Fall semester, and an A plus in the Spring semester. Therefore, it was clear Student was able to access the curriculum in her English class during the 2023-2024 school year, even though it was not co-taught by both a special education teacher and a general education teacher. Student's

outstanding performance in her English class during her senior year was convincing evidence that Student did not require a co-taught English class. Student offered no persuasive evidence establishing that the team's failure to offer a co-taught English class denied Student a FAPE.

Because Parent did not consent to the offered Academic Lab class as part of the March 16, 2023 IEP, Student was enrolled in all general education classes during the 2023-2024 school year. Additionally, Student was very busy during the school day with three periods devoted to choir. Consequently, she did not have time to devote to learning study skill techniques and strategies, or to seek help from teachers on her academic classes during the school day, or even before the school day, because Student was scheduled for a "zero period" class. For most of the 2023-2024 school year she also did not have time to receive the weekly counseling, and speech therapy services and the special education consultation service she was offered because she was too busy with choir performances and competitions, and keeping up with her academic work. Furthermore, Student elected to not avail herself of the offered counseling and speech and language services. Los Alamitos made those services available to Student, but Student elected not to participate in them.

Parent historically did not want Student to be in a speech and language group with other children who were not at Student's average to above average cognitive level. For that reason, Parent revoked her consent to implementation of Student's speech and language therapy group sessions when Student was in middle school, and it was not until August 4, 2023, that Parent consented to the implementation of the weekly speech services. However, less than two weeks later Parent requested that the speech and counseling services be reduced by half. Then Parent revoked consent to the

implementation of any speech services and counseling services between at least mid-December 2023, through mid-May 2024. Yet, Parent complained Los Alamitos had not sufficiently worked on Student's conversational skills and group communication skills. Student is estopped from complaining about the insufficiency of speech and language services when Student refused to access the offered speech and language services.

Student did not introduce persuasive evidence proving Los Alamitos failed to offer appropriate services, supports, and goals in specialized academic instruction, mental health, speech and language, or transition in the March 16, 2023 IEP.

Los Alamitos prevailed on Issue 2 regarding the March 16, 2023 IEP.

THE OFFER OF A FAPE IN THE IEP DATED MARCH 28, 2024

During 12th grade Student's IEP team met on March 28, 2024, approximately nine weeks before Student graduated from high school, for the purpose of conducting an annual IEP review. That IEP team conveyed an offer of special education and related services for the period from March 28, 2024, through June 4, 2024, the date of Student's anticipated graduation from Los Alamitos High School. The IEP team noted Student's medical diagnoses of autism spectrum disorder and attention deficit hyperactivity disorder impacted her educational performance. The team also noted the impact of Student's social-emotional, pragmatics, and fluency deficits.

The March 28, 2024 IEP team reviewed Student's present levels of achievement and her progress on her previous annual goals. Student had either met or made appropriate progress on her prior annual goals, except those in speech, and mental health. Los Alamitos staff was unable to collect data on Student's progress in speech

and mental health because Parent had reduced those services by 50-percent only a week into the school year, and then revoked her consent altogether to the implementation of those services from at least mid-December 2023 (or possibly earlier) through mid-May 2024.

Student was on track to graduate with her class on June 4, 2024. The team reviewed the excellent grades Student earned in the Fall semester of the 2023-2024 school year, which consisted of five A's, one B plus, and one B. The team also reviewed progress Student made during the first quarter of the Spring semester of the 2023-2024 school year. All indications were that Student was relatively happy and doing well in school on March 28, 2024.

ANNUAL GOALS AND ACCOMMODATIONS OFFERED IN THE MARCH 28, 2024 IEP

The March 28, 2024 IEP team developed and offered Student seven proposed goals to be reached by Student by June 4, 2024, in the following six areas of need:

- executive functioning, study strategies
- pre-vocational, work completions
- pre-vocational, preparing note cards for tests, and self-advocating for accommodations
- social communication
- fluency: feelings
- fluency: strategies and situations

The team also developed and offered Student the following 19 accommodations:

- Break multi-step assignments that may span across multiple sessions into smaller tasks with frequent checks by teacher with specific steps to ensure Student knows what is expected and how to do the task;
- Flexible seating (close to board, strategic seating, centered, close to teacher, with a supportive peer);
- Provide instruction in both visual/auditory formats;
- Use of Thinking Map or graphic organizer to be used on writing assignments;
- Copies of work samples (such as homework and completed quizzes);
- Provide Student with teacher resources (notes/power points/study guides) to prepare exams);
- Additional time on tests (up to 1.5 times the allotted time);
- Additional time for assignments after the due date or up to one week after the original due date (with exception for choir practice and performance schedule);
- Scaffold in participation to share with partner or small group prior to sharing in front of the entire class;
- Scaffold writing assignments by chunking steps in the writing process with specific due dates (for introduction, body paragraphs, conclusion);

- Testing in a separate setting;
- Allow use of note card for all tests and exams, including finals;
- Allow extra time for responding due to Student's stuttering and processing as it may take her longer to express her ideas, thoughts, and needs;
- Not calling on Student to read aloud or answer questions in class unless she volunteers;
- Provide the study guide three days before her class peers;
- Allow Student to use a calculator on all math exams;
- Provide Student with the option to re-audition for performance opportunities (music, drama, dance, etc.);
- Provide Student with access to teacher lecture presentations and notes
- Provide Student with lecture notes prior to lectures via hard copy.

The IEP team determined Student did not require program modifications in her general education classes or other education related settings. The IEP team also decided no other supports were needed for Student or school personnel working with her.

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OFFERED GOALS IN THE MARCH 28, 2024 IEP STUDENT CHALLENGED AS INAPPROPRIATE OR NOT MEASURABLE

Student claimed that out of the seven annual goals offered in the March 28, 2024 IEP, Goals numbered 1, 2, 3, 4, and 5, were not appropriate for Student. Each of those challenged goals are addressed below.

Goal 1 in the area of "Executive Functioning/Study Strategies" stated: by 6/4/2024 Student will use various study strategies (flashcards, outlines, study guide, etc.) and seek out additional supports (e.g., Griffin Lab, lunch/after-school lab, etc.) to result in earning at least 85-percent or above, in four out of four classes in the area of test/quizzes as measured by AERIES generated progress/report cards.

Student argued the baseline was not specific enough and the goal was not measurable. Student offered no persuasive evidence that the baseline of Goal 1 was insufficiently specific, or that the goal was not measurable. The baseline of Goal 1 was appropriately specific because it stated information gathered from Student's teachers regarding Student's use of executive functioning tools. Furthermore, the goal was clearly measurable by Student earning 85-percent on all quizzes and tests in four out of four classes. Student failed to prove Goal 1 was not measurable or based on an inappropriate baseline such that it denied her a FAPE.

Therefore, Goal 1 was appropriate for Student.

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Goal 2 in the area of “Work Completion” stated: by 6/4/2024 Student will independently monitor her tasks by completing the majority of her classwork/homework (including make up assignments) and seek out additional supports (e.g., Griffin Lab, lunch/after-school lab, etc.) to result in earning 85-percent or above in the area of classwork in each core class as measured by AERIES gradebook records.

Student argued this goal was inappropriate because it was similar to a prior annual goal, and the baseline lacked necessary information. However, the evidence demonstrated Student needed to continue to work on her independent work completion skills. Student did not offer persuasive evidence to prove that the baseline of Goal 2 lacked necessary information. Los Alamitos drafted an appropriate baseline which was based on data case manager Smith collected prior to the March 28, 2024 IEP team meeting. Student failed to prove Goal 2 or the baseline for it was inappropriate such that it resulted in a denial of FAPE.

Therefore, Goal 2 was appropriate for Student.

Goal 3 in the area of “Prevocational” stated: by 6/4/2024, when in need of teacher assistance and use of IEP accommodations within the general education classroom Student will coordinate with general educator to arrange use of accommodations (i.e., preapproved testing notecard, test in separate setting, assignment extensions, additional clarification) with four out of five situations and 80-percent consistency as measured by teacher observation, reporting and student records.

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Student argued this goal was inappropriate because Student should not have to ask for her accommodations to be provided because District was obligated to provide those accommodations without a reminder. However, self-advocating for her accommodations to be provided when needed was an important skill Student needed to master in order to succeed in college and in her adult life. Increased independence was of paramount importance to Student's continued academic success. Student failed to prove Goal 3 was inappropriate such that it resulted in a denial of FAPE.

Therefore, Goal 3 was an appropriate goal for Student.

Goal 4 in the area of "Social Communication" stated: by 6/4/2024, during structured speech and language sessions, given pictured social scenes, videos, or discussions of naturally occurring interactions as reported by Student, she will (1) expressively label at least two different perspectives from scenarios by describing their thoughts ("What were they thinking?") and/or feelings ("How do you think they feel?"), and (2) expressively label non-verbal communication related to different perspectives (e.g., body language, tone of voice, facial expression, etc.) in eight percent of opportunities across two consecutive sessions per semester as measured by therapist data and/or observation.

Student argued this goal was the same as the last annual goal in this area and the goal was not measurable. However, the evidence was clear that Student needed continued work in the skills addressed by this goal, particularly since Parent revoked speech and language services for most of the 2023-2024 school year. Student failed to present persuasive evidence that Goal 4 was not measurable. This goal was measurable based on data collected by the speech therapist and by observations of the speech

therapist regarding whether Student could accurately identify the perspectives of others from their verbal and nonverbal clues. Student failed to prove Goal 4 was inappropriate such that it resulted in a denial of FAPE.

Therefore, Goal 4 was appropriate for Student.

Goal 5 in the area of “Fluency-feelings” stated: within a year Student will increase her positive communication attitudes as evidenced by at least one of the following: increase Speech Satisfaction 10-point rating scale score, and/or completion of sections or entire OASES compared to her initial evaluation/rating as measured by Student input on rating scales given by the speech-language pathologist during each semester.

Student argued this goal was the same as the prior annual goal and the goal was not measurable. This goal was intended to improve how Student felt about her speech because she had a mild stutter. Student’s satisfaction with her speech was measured by her self-rating scores on the OASES instrument. This goal was appropriate because Student continued to need further work on developing skills addressed by this goal. Student failed to introduce persuasive evidence that Goal 5 was not appropriate for Student, or that the goal was not measurable. This goal was clearly measurable through Student’s scores on the Speech Satisfaction 10-point rating scale or on the entire OASES instrument that the speech-language pathologist administered to Student each semester. Student failed to prove Goal 5 was inappropriate such that it resulted in a denial of FAPE.

Therefore, Goal 5 was appropriate for Student.

STUDENT CONTENDS SHE SHOULD HAVE BEEN OFFERED
GOALS IN ADDITIONAL AREAS IN THE MARCH 28, 2024 IEP

Student also contended she should have been offered goals in the additional areas of:

- reciprocal conversations
- social skills (inserting herself into a group)
- appropriate participation in classroom (working in a group, asking for help/clarification when needed)
- pragmatics
- fluency
- transition (filling out applications,
- making appointments,
- keeping and balancing a checking account,
- using public transportation,
- creating a resume)
- time management
- perspective taking
- arriving to school on time

Student offered no persuasive evidence that she required additional goals in the nine areas listed above. The seven proposed goals and 19 accommodations offered in the March 28, 2024 IEP, along with the general education curriculum, addressed all

Student's areas of need. Student failed to prove that any of those areas were not sufficiently addressed by the March 28, 2024 IEP, or the general education curriculum in which Student was enrolled.

Some of the areas in which Student claims she needed goals in, are areas of need of all high school students. Those needs were addressed through the general education curriculum provided to all 12th graders. The balance of the other areas in which Student claimed she needed other goals, were sufficiently addressed through the seven offered goals, and the extensive number of accommodations offered in the March 28, 2024 IEP. Student incorrectly takes the position that Los Alamitos was required to offer Student goals on every educational and functional need Student had. Student's position is contrary to the law. (See, *Coleman, supra*, 983 F.Supp.2d at p. 573.

All goals offered in the March 28, 2024 IEP were appropriate and measurable. Moreover, Student did not require additional goals in any other areas in the March 28, 2024 IEP to access her education and make progress.

SPECIALIZED ACADEMIC INSTRUCTION, RELATED SERVICES, AND SUPPORTS OFFERED IN THE MARCH 28, 2024 IEP

The following specialized academic instruction, related services, and supports were offered in the March 28, 2024 IEP:

- specialized academic instruction for 275 minutes weekly, to be provided in a group special education setting in the Academic Lab class from March 28, 2024 to June 4, 2024.

- specialized academic instruction consultation to help facilitate Student's assignment completion for 60 minutes monthly from March 28, 2024 to June 4, 2024.
- individual educational mental health counseling services to support social-emotional goals to be provided individually for 45 minutes weekly from March 28, 2024 to June 4, 2024.
- language and speech services to be provided individually for two 45-minute sessions monthly from March 28, 2024 to June 4, 2024.

Extended school year was not offered. The IEP noted Parents would be informed of Student's progress once each semester through a progress summary report.

TRANSITION PLAN OFFERED IN THE MARCH 28, 2024 IEP

The individual transition plan offered in the March 28, 2024 IEP adopted and incorporated the recommendations of Greene's independent transition assessment of Student, which the IEP team had reviewed a year earlier. The transition plan offered addressed Student's interests, which were identified through her responses to interest inventories and questionnaires case manager Smith had administered to Student, as well as through Greene's earlier independent transition evaluation. By March 2024 Student's post-secondary plan was to attend a specific four-year university on the east coast that had accepted her. That university offered studies that met Student's post-secondary interests and plans. Student planned to pursue studies there in animal science and musical theatre.

In his transition assessment of Student Greene had not recommended separate goals in independent living because Greene had found Student was capable of living independently at an out of state university. Therefore, the team properly determined Student did not need a goal in independent living. The IEP team continued to recommend Student work on her executive functioning deficits through the specialized academic instruction offered through the Academic Lab class.

The team noted Student had made significant progress over the last year in all areas, even though she had not taken advantage of most of the speech and language and counseling services Los Alamitos had made available to her earlier in the 2023-2024 school year, which had been offered in the March 16, 2023 IEP. By the time the team met on March 28, 2024, Student had completed, or was in the process of completing, all her high school graduation requirements and "A through G" college class requirements. By March 28, 2024, Student was feeling much less anxious about school than she had felt previously. Student was happy about being admitted to 14 out of the 16 colleges to which she had applied. She had also completed earning her graduation cord in sports medicine, which is an award given to students who have completed certain classes in sports medicine. Student was looking forward to attending college at a major university where she could study animal science.

Case manager Smith persuasively testified that the specialized academic instruction, counseling services, and speech and language services offered in the March 28, 2024 IEP supported Student's post-secondary goals and her individual transition plan. Smith reasonably opined that Student's post-secondary goals would appropriately address Student's executive functioning deficits. He also convincingly testified that the educationally related mental health services offered would address

Student's anxiety and social-emotional deficits, and the speech and language services would address Student's fluency and pragmatics deficits. Student's progress in these areas was needed for her to achieve her post-secondary goals.

Consequently, the individual transition plan, as well as the post-secondary goals offered Student, were appropriate.

ANALYSIS OF THE SUFFICIENCY OF THE SERVICES AND SUPPORTS IN SPECIALIZED ACADEMIC INSTRUCTION, MENTAL HEALTH, SPEECH AND LANGUAGE, AND TRANSITION, OFFERED IN THE MARCH 28, 2024 IEP

Casteel gave no opinion about the sufficiency of the services and supports offered as a FAPE in the March 28, 2024 IEP. Student failed to introduce persuasive evidence that the related services and supports offered in the areas of specialized academic instruction, mental health, speech and language, and transition, were inappropriate to meet Student's needs.

As with the March 16, 2023 IEP, Parent thought Student should have been offered an English class in the March 28, 2024 IEP for balance of the 2023-2024 school year that was co-taught by both a general education teacher and a special education teacher. However, Student earned an A in her English class in 12th grade, so she clearly was able to access the curriculum in her general education English class that school year. Furthermore, by March 28, 2024, Student was performing very well in all her Spring semester classes. Student was clearly accessing her education in all of her general education classes, with the services and supports that had been offered and consented to from the prior annual IEP.

Since there was only about nine weeks of the regular school year remaining by March 28, 2024, there was not sufficient time to alter Student's program significantly before she graduated. Moreover, there was no need to change Student's program on March 28, 2024, because Student's educational performance at school during 12th grade was outstanding, and Student was feeling less stressed and happier at school than she had been previously.

Student failed to introduce persuasive evidence that she required specialized academic instruction, services, supports, or goals that she was not offered in the IEP dated March 28, 2024 IEP. For the reasons discussed above in the analysis of the March 16, 2023 IEP, the offered specialized academic instruction to be provided to Student in the Academic Lab class was the least restrictive environment in which Student could receive it. As addressed earlier, Student could not have tolerated "push-in" instruction and assistance from a special education teacher in any of her general education classes. That model would have caused Student extreme anxiety and would be unlikely to provide her with the specialized academic instruction she needed, due to Student's resistance to receiving academic help in front of her neurotypical peers.

Student failed to prove by a preponderance of the evidence that the offer of a FAPE in the March 28, 2024 IEP denied her a FAPE by offering legally insufficient services, supports and goals in the areas of specialized academic instruction, mental health, speech and language, and transition. Student failed to establish that she was denied a FAPE in either of the two IEPs offered to her by Los Alamitos between March 3, 2023, and June 4, 2024.

Los Alamitos prevailed on Issue 2.

ISSUE 3: DID LOS ALAMITOS DENY STUDENT A FAPE FROM MARCH 3, 2023, THROUGH THE 2022-2023 AND 2023-2024 SCHOOL YEARS, BY MATERIALLY FAILING TO IMPLEMENT PARTS OF EVERY GOVERNING IEP DURING THOSE YEARS?

Student contends Los Alamitos materially failed to implement all of Student's goals, and most of Student's accommodations and services from March 3, 2023, through June 4, 2024. Student further contends Los Alamitos failed to implement many of her goals because her general education teachers were not working on them, and staff could not work on the goals because the goals did not have sufficient baselines or were not measurable.

Los Alamitos contends it materially implemented all parts of the IEP dated February 17, 2022, from March 3, 2023, through the end of the 2022-2023 regular school year. Los Alamitos further contends it materially implemented all parts of the March 16, 2023 IEP from August 4, 2024, when Parent consented to it, through June 4, 2024, the date Student graduated from high school. Los Alamitos contends Parent reduced, and thereafter revoked, her consent for implementation of speech and language services, and educationally related mental health services for most of the 2023-2024 school year. Los Alamitos contends all services offered in the applicable IEPs were available to Student, but she often would not respond to emails from her case carrier asking Student to meet with him so he could implement the 60 minutes per month of specialized academic instruction consultation. Los Alamitos also contends Student would often ignore call slips and emails sent by case manager Smith and service providers, asking Student to meet with them for the offered services, which were all available to Student.

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 School Dist. 5J* (9th Cir. 2007) (*Van Duyn*), 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.) The materiality standard does not require that the student suffer demonstrable educational harm to prevail. (*Ibid.*) The student's educational progress, or lack thereof, may be indicative of whether there was more than a minor discrepancy in the services provided. (*Ibid.*) There is no statutory requirement of perfect adherence to the IEP, nor is there any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.)

Here, Student failed to establish that Los Alamitos materially failed to implement Student's two IEPs in effect between March 3, 2023, and June 4, 2024, namely, the February 17, 2022 IEP, and the March 16, 2023 IEP. Parent consented to the February 17, 2022 IEP in part on June 28, 2022. That IEP was in effect until August 4, 2023 when Parent consented to portions of the March 16, 2023 IEP, which was in effect through Student's graduation on June 4, 2024, except for those portions amended or revoked by Parent. The March 28, 2024 IEP was never consented to by Parent, or by Student when she turned 18 years old, so Los Alamitos did not have authority to implement it.

STUDENT FAILED TO PROVE LOS ALAMITOS MATERIALLY FAILED TO IMPLEMENT HER IEPs

The evidence presented by Student regarding which portions of her applicable IEPs were allegedly not materially implemented was scattered, confusing, vague, and

not credible. Almost all of that evidence consisted merely of Parent's testimony that goals, services and accommodations were not implemented by Student's teachers or her case manager. That testimony lacked specificity, lacked credibility, and was confusing. Parent's unsupported testimony was not convincingly corroborated by admitted persuasive evidence.

Even Student's closing brief failed to identify with specificity which precise goals, accommodations, and services were allegedly not materially implemented by Los Alamitos, or when. Parent was not present at Los Alamitos High School. Parent did not establish that she had personal knowledge about any material failure by Los Alamitos to implement IEP goals, services and accommodations. Student did not testify specifically about which portions of the February 17, 2022 and March 16, 2023 IEPs Los Alamitos supposedly materially failed to implement from March 3, 2023, through Student's high school graduation. Neither Parent, nor Student, explained which goal, service, or accommodation Los Alamitos should have implemented, but failed to do so, during which specific dates.

Case manager Smith, and school psychologist Belisle both testified Student often failed to respond to emails or call slips they sent Student asking her to meet with them at specific times to receive specialized academic instruction, or related services. Ashley Weiss-Wright, the educationally related mental health services provider, testified Student missed numerous counseling sessions. Furthermore, when Student went to the counseling sessions with Weiss-Wright, Student often wanted to leave the sessions early. Specialized academic instruction and related services consented to were made available to Student throughout the applicable period, but she frequently did not take advantage of them.

Parent first reduced speech and language and counseling services in August 2023, a week after the beginning of the 2023-2024 school year. Starting in about October 2023, through mid-December 2023 Parent indicated she was revoking her consent altogether for implementation of speech and language and counseling services. This revocation continued through mid-May 2024. Parent revoked those services because Student was very busy during the school day and before and after school, due to her commitments to choir and other activities, such as private tutoring sessions and equine therapy. Additionally, Student often could not meet with Smith after school when he offered to implement the 60 minutes per month of specialized academic instruction consultation because Student was often busy.

Los Alamitos could not force Student to participate in the one hour per month specialized academic instruction consultation available through Smith, or the related services in speech and language, and mental health counseling. Furthermore, Smith very credibly testified he spent far more than one hour a month providing specialized academic instruction consultation to Student from March 3, 2023, through June 4, 2024. Smith believably testified he spent a tremendous amount of time, in excess of 60 minutes per month, facilitating communication between Student and her teachers, and helping Student keep track of her various deadlines for assignments and tests. The evidence was clear that Smith also spent significant time facilitating communication between teachers and Parent regarding Student's program and progress.

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Both Smith and all of Student's teachers who testified at hearing, credibly demonstrated that Smith and Student's teachers had many communications from March 3, 2023, through June 4, 2024, to assure Student received all the numerous accommodations offered in her IEPs. Student failed to provide credible evidence of exactly what, if any, specific accommodations were not implemented on what specific dates, by which specific teachers. This was Student's burden and she failed to meet it with admissible evidence.

Neither the evidence, nor Student's closing brief identified exactly what services offered in her IEPs were not materially implemented and the dates on which Los Alamitos allegedly failed to implement those services or specialized academic instruction. Student's brief was replete with generalizations about goals, services, and specialized academic instruction that Los Alamitos allegedly materially failed to implement. However, such conclusory statements were not persuasive, and lacked the specificity necessary to support Student's claim for an award of compensatory education, or reimbursement.

Student's closing brief simply stated "[d]ue to the failure of the District to implement Student's IEP, she is entitled to significant compensatory education." Not only is that general conclusory argument inadequate to justify an award of compensatory education, but Student did not present specific persuasive evidence regarding what District failed to implement and when. Missing from the evidence at hearing and from Student's closing brief was any proposed calculation of the amount of compensatory education, or the kind of compensatory education she believed should be awarded to her in this case.

The October 15, 2025 prehearing conference statement expressly notified Student,

“[a]ny party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.”

Student failed to do this. Student did not meet her burden of proof that Los Alamitos owed her compensatory education due to its material failure to implement an IEP. She also failed to meet her burden of proof that she was entitled to reimbursement for expenses Parent incurred for educational services. Student also failed to meet her burden to prove the amount and kind of compensatory education she should be awarded and her need for such compensatory education.

It is not the ALJ's responsibility to construct or develop a party's argument. (*See Loewen v. Berryhill* (9th Cir. 2017) 707 Fed. Appx. 907, 908 (nonpub. opn.), citing *Carmickle v. Commissioner* (9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2 [the court is not required to address arguments made without specificity]; *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D.Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 [the court will not perform the work of representing parties]; *U.S. v. Winkelman* (M.D.Pa. Mar. 10, 2008) 548 F. Supp. 2d 142, 150 [“[Judges] are not pigs searching for truffles and are unwilling to search through the massive record that has been developed in this case to find evidence of these alleged

violations.”]; *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929 [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party’s brief].)

The evidence did not support Student’s position that Los Alamitos failed to implement the goals, accommodations, specialized academic instruction, related services, and transition services in both of the IEPs applicable from March 3, 2023, through Student’s graduation. Consequently, Student did not meet her burden of proof that Los Alamitos denied her a FAPE by materially failing to implement portions of the February 17, 2022 and March 16, 2023 IEPs.

Lastly, Student took the position that because Parent disagreed with certain methodologies chosen by Los Alamitos to implement Student’s IEPs, that constituted a material failure to implement. However, the IDEA accords educators discretion to select from various methods of meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with an educational benefit. (*Crofts v. Issaquah School Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056-57 (*Crofts*.) Los Alamitos’s election to implement Student’s IEPs by applying methodologies Parent did not prefer, did not constitute a material failure to implement the IEPs.

Student failed to establish she was denied a FAPE due to Los Alamitos’s material failure to implement parts of the governing IEPs from March 3, 2023, through June 4, 2024.

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ISSUE 4: DID LOS ALAMITOS DENY STUDENT A FAPE FROM MARCH 3, 2023, THROUGH THE 2022-2023 AND 2023-2024 SCHOOL YEARS BY FAILING TO COLLECT AND PROVIDE DATA ON STUDENT'S GOAL PROGRESS, SERVICES AND SUPPORTS?

Student contends Los Alamitos denied Student a FAPE by failing to appropriately collect data on Student's goal progress and provide such data to Parent.

Los Alamitos contends it sufficiently collected data on Student's goal progress and provided collected data to Parent when it was available. Los Alamitos also contends it properly reported on Student's goal progress at the end of each semester, consistent with the terms of the implemented IEPs, and before each of Student's annual IEP review team meetings.

In addressing the requisite content of an IEP, Education Code, section 56345, subdivision (a)(3) mandates that an IEP shall include

"[a] description of the manner in which the progress of the pupil toward meeting the annual goals described in paragraph (2) will be measured and when periodic reports on the progress the pupil is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided."

The IEP dated February 17, 2022, was consented to by Parent on June 28, 2022. For purposes of the analysis of Issue 4 here, the consented to portion of the February 17, 2022 IEP was implemented between March 3, 2023, through August 4, 2023, when Parent

signed the March 16, 2023 IEP. The February 17, 2022 IEP, on the page titled "Offer of FAPE – Educational Setting" expressly stated that, "Parents will be informed of progress..." each semester by a "progress summary report." Consequently, Los Alamitos was obligated to report to Parents on Student's progress only once each semester with a progress summary report per the plain language of the February 17, 2022 IEP. Los Alamitos was not obligated to collect data on Student's progress as often as Parent preferred or using the methodology Parent preferred.

The IEP dated March 16, 2023, was consented to by Parent on August 4, 2023. For purposes of the analysis of Issue 4, the consented to portion of the March 16, 2023 IEP was implemented between August 14, 2023, the first day of the regular 2023-2024 school year, through June 4, 2024, the day Student graduated from Los Alamitos High School, except as amended or later revoked. The March 16, 2023 IEP, on the page titled "Offer of FAPE – Educational Setting," stated that, "Parents will be informed of progress ..." each semester by a "progress summary report." Consequently, Los Alamitos was obligated to report on Student's progress to Parents only once a semester with a progress summary report. Los Alamitos was not obligated to collect data when or how Parent preferred, or do anything further to report on Student's progress as was expressly stated in the IEP dated March 16, 2023.

Los Alamitos reported to Parents on Student's progress each semester, and at Student's annual IEP review meeting, consistent with what was called for in the two applicable implemented IEPs. There was no evidence Los Alamitos failed to report on Student's goal progress to Parents each semester with a progress summary report.

Parent preferred to receive more frequent reports of data collected on Student's goal progress than was called for in the applicable IEPs. Parent also disapproved of the length of time during which Smith collected data on Student's goal progress. For example, case manager Smith often collected data for two school weeks to check on Student's goal progress. Parent preferred data be collected for longer periods of time.

Parent opined that the methods used by Smith to collect information and data regarding Student's progress from Los Alamitos staff working with Student, were unreliable. However, Parent wanted data to be collected differently and more frequently. For example, Parent opined the questionnaires Smith circulated to Student's teachers as a means of collecting data on Student's goal progress did not result in responses that accurately reflected Student's actual progress.

However, there was no evidence Parent was an expert on collecting data regarding goal progress. In contrast, Smith was a very experienced credentialed special education teacher and case manager. Smith held a master's degree in special education, and had significant experience teaching special education classes. Smith's method of data collection proved to be more reliable than Parent's uncorroborated opinions. Additionally, the evidence demonstrated that Los Alamitos provided Parent with data it collected on Student's goal progress that it had at the time Parent demanded it.

Smith drafted questionnaires regarding Student's progress on specific tasks identified within each goal, which Smith then periodically emailed to Student's general education teachers for their responses. Parent disagreed that the teachers' responses to Smith's questionnaires adequately revealed Student's goal progress. Parent's unimpressive testimony was the only evidence Student provided to challenge the sufficiency of Smith's

methods for discerning Student's goal progress. Parent's testimony regarding why she believed Smith's questionnaires were inadequate was not persuasive. Based on Smith's education, training, and experience, his testimony carried more weight than Parent's on the topic of determining Student's goal progress. Moreover, his testimony went unimpeached on cross-examination. Smith's testimony was credible and reliable. Smith persuasively established the appropriateness of his data collection methods on Student's goal progress from Student's general education teachers and service providers.

The law is clear that unless otherwise specified in an IEP, the school district, rather than parents, has authority to determine the method and timing of data collection, if any, on Student's goal progress. The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. (*Crofts, supra*, 22 F.4th at p. 1056–57 [citing *R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122].) A district is not required to use the methodology a parent prefers. School districts are "entitled to deference in deciding what programming is appropriate as a matter of educational policy." (*Id.*, at 1056, citing, *J.L. v. Mercer Island School Dist.*, (9th Cir. 2010) 592 F.3d 938, 945 n.5.)

In this case Student was not entitled to have data collected on her goal progress in the manner and frequency that Parent preferred. The methodology and timing of data collection used by Los Alamitos to measure Student's goal progress was solely within Los Alamitos' discretion, except as expressly required by Student's IEPs. Parent's opinions that Smith should have collected data more frequently, and by using another

data collection method preferred by Parent, do not constitute a valid basis for a denial of FAPE claim. Moreover, Parent's testimony that the data collected by Los Alamitos's staff members regarding Student's goal progress was unreliable was unpersuasive.

Parent's preferred methods of determining whether Student made progress on her goals did not appear to be more accurate than the data collection methods used by Smith. In fact, the opposite was true. Smith's methods of data collection appeared to be effective and accurate. Smith's and related service providers' testimony regarding the efficacy of methods they employed to collect data on Student's progress was convincing. Those methods seemed to be reliable. Moreover, Student presented no authority that Parent, rather than Los Alamitos, had authority to select or dictate the methodology Smith used to collect data on Student's goal progress. (See, *Crofts, supra*, 22 F.4th at p. 1056–57.)

A federal regulation requires that an IEP include

"[a] description of (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided... ."

(34 C.F.R. § 300.320(a)(3).)

Student cited no authority supporting the position that Student was entitled to demand progress reports more frequently than expressly indicated in the applicable IEPs. Student also cited no authority that she was entitled to data collection using a methodology or frequency that Parent preferred or considered more reliable. The Ninth

Circuit confirmed, " that the IDEA does not require adopting the 'specific form of data collection preferred by' [student's] parents." (*Capistrano, supra*, 21 F.4th at p. 1135.) Instead, any question regarding the manner of goal data collection is within the sound discretion of the school district, not parents.

The only evidence Student introduced challenging Los Alamitos's reporting on Student's progress was Parent's testimony. However, Parent's criticisms of the methods used by Smith to determine if Student was making progress were not persuasive. There was no evidence Los Alamitos failed to report to Parents on Student's progress each semester and before each annual IEP review team meeting.

Student failed to prove by a preponderance of the evidence that she was denied a FAPE due to Los Alamitos's failure to collect and provide data on Student's goal progress, services and supports. Los Alamitos prevailed on Issue 4.

ISSUE 5: DID LOS ALAMITOS DENY STUDENT A FAPE FROM MARCH 3, 2023, THROUGH THE 2022-2023 AND 2023-2024 SCHOOL YEARS, BY DENYING PARENTS MEANINGFUL PARTICIPATION IN THE IEP PROCESS, SPECIFICALLY BY DISREGARDING OR DENYING THEIR REQUESTS FOR PROGRAMMING AND FOR DATA ON STUDENT'S GOALS AND SERVICES?

Student contends Los Alamitos denied Student a FAPE when it impeded Parents' opportunity to meaningfully participate in the IEP process by disregarding or denying Parents' requests for certain programs and data on Student's goal progress.

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Los Alamitos contends it did not deny Student a FAPE by significantly impeding Parents' opportunity to participate in the decision-making process regarding provision of a FAPE to Student. Los Alamitos contends Parents meaningfully participated in all of Student's IEP team meetings. Los Alamitos contends all of Parents' requests for programming and data were thoughtfully considered by the IEP team and were not disregarded without consideration. Los Alamitos also contends it granted many of Parents' requests. Los Alamitos further contends that when it denied a request from Parents, it explained the reasons for its denial to Parents.

Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).)

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 team 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, 693-5 (N.L.) [holding an organizational meeting without parent before IEP team meeting did not deny parental

participation at the IEP team meeting]; *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].)

Participation must be more than a mere form; it must be meaningful. (*Target Range, supra*, 960 F.2d at 1485.) Finding meaningful participation requires a qualitative determination and not the application of a mechanical test. The failure to provide necessary information at an IEP team meeting can deprive parents of the ability to meaningfully participate in the meeting and renders them unable to have an informed discussion with the district members of the team. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1125–1126.) A district has not ensured meaningful parental participation if there are procedural violations that deny parents access to information necessary to understanding the proposed educational program.

The evidence was clear that Parents attended and actively participated in all IEP team meetings held from March 3, 2023, through June 4, 2024. The evidence also established that Parents and Student were provided with information necessary for Parents to make informed decisions. Parent made numerous requests for programming, and data on Student's progress and services, not just at IEP team meetings, but throughout the entire applicable time period. Parent was extremely involved in Student's program.

The evidence demonstrated the IEP team and Los Alamitos considered each of Parents' requests for programming and data. At times, Los Alamitos granted Parents' requests. For example, Los Alamitos granted Parent's requests for independent educational evaluations in both transition and educationally related mental health

services. Los Alamitos also granted Parent's request that Student's educationally related mental health services be increased from the assessor's recommendation of 30 minutes per week, to 45 minutes per week.

In the instances Los Alamitos denied Parents' requests for either programming or data, Los Alamitos explained the reasons for its denial of Parents' requests in a prior written notice or in the applicable IEP. There was no convincing evidence that Los Alamitos ever took a "take it or leave it" approach with Parents regarding the programs and services offered in Student's IEPs. There was also no evidence that Parent's requests for data on Student's goal progress were disregarded. The IEP team did not always agree with Parents' requests, but, when it denied one of Parents' requests it always explained the reasons why it denied the request. Parent often requested programming or data that was beyond the district's obligation, such as Parent's request for specialized academic instruction to be provided to Student individually after school by a teacher certified in a specific subject area, such as math.

The record was replete with voluminous emails and other communications between Parent and various Los Alamitos staff members. Smith and other Los Alamitos staff members and administrators conscientiously responded to Parent's communications by explaining the Los Alamitos's positions on Parent's requests. Student did not produce persuasive evidence that Los Alamitos ever disregarded, or denied without reasonable consideration, any of Parents' requests for programming or collection of data on Student's goals within the applicable timeframe. Therefore, the evidence established that Parents meaningfully participated in the IEP process throughout the applicable period.

Student failed to prove by a preponderance of the evidence she was denied a FAPE from March 3, 2023, through Student's high school graduation that Los Alamitos significantly impeded Parents' opportunity to participate in the decision-making process regarding provision of a FAPE to Student specifically by disregarding or denying Parents' requests for programming and data on Student's goals and services.

Los Alamitos prevailed on Issue 5.

ISSUE 6: DID LOS ALAMITOS DENY STUDENT A FAPE BY EXCLUDING HER FROM MEANINGFUL PARTICIPATION IN HER MAY 14, 2024 IEP TEAM MEETING?

Student contends Los Alamitos denied her a FAPE by preventing her meaningful participation in the IEP meeting dated May 14, 2024, by failing to have her academic counselor present at the meeting.

Los Alamitos contends Student meaningfully participated in the May 14, 2024 IEP meeting, and all required IEP team members were present at that meeting.

Student turned 18 years old less than a month before her high school graduation. The day of her 18th birthday, Student sent an email to case carrier Smith requesting he set up an IEP team meeting for the following week to discuss accommodations Student would need in Fall 2024 when she started attending college. Student also told Smith she wanted to discuss starting up counseling and speech and language services for the final few weeks of the 2023-2024 regular school year. Student had not received those services since before Parent revoked her consent to implementation of those services in the Fall semester of the 2023-2024 school year.

On May 10, 2024, Smith sent an email to Student, Parents, and other IEP team members, along with an IEP team meeting invitation and a link to join the meeting virtually, which was set for May 14, 2024, from 1:30 to 2:30 p.m. In that May 10, 2024 email, Smith informed Student, Parents and all IEP team members, that Student's academic counselor, Jodi Hutchinson, would not be able to attend the meeting because she was scheduled to proctor an exam during the time scheduled for the meeting.

On the afternoon of May 13, 2024, Student informed Smith in an email that she would not excuse Hutchinson from attending the IEP team meeting. Since the meeting was set for less than 24 hours away, Smith offered to invite David Mollenkamp, Student's choir teacher, to attend the IEP team meeting as one of Student's general education teachers, in place of Hutchinson. In that email, Smith also offered to reschedule the IEP team meeting to a date Hutchinson was available to attend. However, Student would not agree to reschedule the IEP team meeting, even though she would not agree to excuse Hutchinson. Student also told Smith that Mollenkamp was not an appropriate general education teacher to attend because Student wanted to discuss accommodations she needed for academic classes in college.

Smith informed Student that assistant principal, Cara Vienna, and school psychologist Morris, would be present at the meeting and could answer questions within Hutchinson's areas of expertise. Smith also confirmed that Student's Finite Math teacher, David Barker, would also be attending the meeting as one of Student's general education teachers.

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The IEP team meeting was held on May 14, 2024, from 1:30 p.m. to 2:58 p.m. In attendance were

- Student;
- Parents;
- Vienna;
- program specialist Amanda Smith;
- school psychologist Morris;
- mental health counselor Weiss-Wright;
- speech-language pathologist Eide;
- special education teacher and case carrier Smith;
- Finite Math general education teacher Barker; and
- Choir general education teacher Mollenkamp.

When the meeting opened Vienna explained that Hutchinson's attendance was not legally required, and Vienna, as the District's administrative designee, and Morris, were able to answer questions that might be posed to Hutchinson during the meeting.

The team addressed Student's needed accommodations in college. Barker shared information about accommodations Student needed in Finite Math. Mollenkamp shared that it might be helpful if Student had an accommodation to redo an audition, if necessary. After discussion, the team added a few accommodations to the IEP and omitted some accommodations from the IEP that Student no longer wanted to have at college.

The team then discussed Student's interest in having a speech and language service session, and an educationally related mental health service session, once a week for the final few weeks of the school year. The providers, Weiss-Wright, and Eide, were at the meeting and they agreed to meet with Student for those services until May 29, 2024, the final date Los Alamitos provided related services to any enrolled pupils during the 2023-2024 regular school year.

ALL REQUIRED TEAM MEMBERS ATTENDED THE MAY 14, 2024 IEP TEAM MEETING

The IEP team must include one or both of the parents or a representative chosen by the parents. It must include not less than one regular education teacher of the child if the child is participating in general education and not less than one special education teacher, or where appropriate, one special education provider to the student. It must include a representative of the school district who is:

- qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student;
- knowledgeable about the general education curriculum; and
- knowledgeable about the availability of school district resources. (20 U.S.C. § 1414(d)(1)(B)(ii).)

Participants in an IEP team meeting may fulfill more than one role. It is not required that each role be filled by a different person. (34 C.F.R. § 300.321(a)(5) and (d); Ed. Code, § 56341, subdivisions (b)(5) and (e).) The failure to include required team

members is a procedural violation of the IDEA. Procedural violations do not automatically require a finding of a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *Target Range, supra*, 960 F.2d at p. 1483–1484.)

All legally required members attended the May 14, 2024 IEP team meeting. The Ninth Circuit has expressly held that the IDEA reference to a regular education teacher of the child at IEP team meetings does not require the presence of the student’s current general education teacher on the IEP team. (*R.B. v. Napa Valley Unified Sch. Dist.*, *supra*, 496 F.3d 932, 939). However, the teacher chosen as an IEP team member should be knowledgeable about the child and implementation of the IEP developed. (*Ibid.*)

In the instant case Los Alamitos satisfied that requirement by having two of Student’s then current general education teachers, Barker and Mollenkamp, at the May 14, 2024 IEP team meeting. Moreover, all of Student’s and Parents’ questions raised at the May 14, 2024 IEP team meeting were competently answered by the IEP team members present. Los Alamitos was not required to have Hutchinson attend the May 14, 2024 IEP team meeting.

STUDENT MEANINGFULLY PARTICIPATED IN THE MAY 14, 2024 IEP TEAM MEETING

Student did not claim in her closing brief that a legally required member of the IEP team failed to attend the May 14, 2024 IEP team meeting. Instead, Student argued she was denied meaningful participation because Hutchinson did not attend the meeting. Student’s claim is without merit. Even though Hutchinson could not attend that meeting as Student had hoped, other members of the team were able to answer all Student’s concerns about the accommodations she would need at college, and the

process by which her college would be informed of those accommodations. Smith explained how Student's university would be informed of the accommodations she required.

Furthermore, both Weiss-Wright and Eide attended the meeting. Both of those service providers made concrete arrangements with Student to receive counseling and speech and language services from them in the few weeks remaining in the school year. There was no evidence that those services were not provided as Weiss-Wright and Eide had agreed with Student during the May 14, 2024 IEP team meeting.

Consequently, all matters Student called the IEP team meeting to address were successfully discussed, and plans were agreed upon and finalized. Student provided no evidence she was unable to meaningfully participate in the May 14, 2024 IEP team meeting. In fact, the notes of that IEP team meeting establish Student meaningfully participated in the May 14, 2024 IEP team meeting.

Student failed to prove by a preponderance of the evidence she was denied a FAPE by Los Alamitos excluding her from meaningful participation in the May 14, 2024 IEP team meeting. Los Alamitos prevailed on Issue 6.

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 1:

Los Alamitos did not deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by failing to identify, locate and assess Student in the areas of

- functional behavior,
- educationally related mental health,
- speech and language, transition,
- executive functioning, and
- academics.

Los Alamitos prevailed on Issue 1.

ISSUE 2:

Los Alamitos did not deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by offering legally insufficient services, supports, and goals in the areas of specialized academic instruction, mental health, speech and language, and transition.

Los Alamitos prevailed on Issue 2.

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ISSUE 3:

Los Alamitos did not deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by materially failing to implement parts of every governing IEP during those school years.

Los Alamitos prevailed on Issue 3.

ISSUE 4:

Los Alamitos did not deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by failing to collect and provide data on Student's goal progress, services, and supports.

Los Alamitos prevailed on Issue 4.

ISSUE 5:

Los Alamitos did not deny Student a FAPE from March 3, 2023, through the 2022-2023 and 2023-2024 school years by denying Parents meaningful participation in the IEP process, specifically, by disregarding or denying their requests for programming and for data on Student's goals and services.

Los Alamitos prevailed on Issue 5.

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ISSUE 6:

Los Alamitos did not deny Student a FAPE by excluding her from meaningful participation in the May 14, 2024 IEP team meeting.

Los Alamitos prevailed on Issue 6.

ORDER

All relief sought by Student is 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.

CHRISTINE ARDEN

Administrative Law Judge

Office of Administrative Hearings