

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

ALHAMBRA UNIFIED SCHOOL DISTRICT.

CASE NO. 2025101049

DECISION

APRIL 30, 2026

On October 27, 2025, Parents, on behalf of Student, filed a due process hearing request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Alhambra Unified School District as respondent. On November 18, 2025, Student filed an amended complaint pursuant to an insufficiency determination. On December 15, 2025, OAH continued the hearing for good cause. Administrative Law Judge, also called ALJ, Penelope Pahl heard this matter via videoconference on January 27 and 28, February 25, and 26, and March 3, 4, and 5, 2026.

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Parent represented Student. Student did not attend the hearing except on the day she testified. Attorneys, Howard Fulfrost and Siobahn Cullen, represented Alhambra. Dr. Stephanie Richardson, Alhambra's director of special education for preschool through eighth grade, attended all hearing days on the school district's behalf.

Following a discussion with the parties, the matter was continued to April 1, 2026, for written closing briefs. The record was closed, and the matter was submitted on April 1, 2026.

ISSUES

ISSUES ADDED AND WITHDRAWN DURING HEARING

On January 12, 2026, a prehearing conference was held before ALJ Thanayi Lindsey, who issued a prehearing conference order listing four issues for hearing. On January 28, 2026, pursuant to a discussion with the parties at hearing, ALJ Pahl issued a written order amending the issues for hearing, enumerating them as Issues 1 through 5. The parties were given through February 11, 2026, to upload, and thereby exchange, any additional evidence on any issue, as they prepared to address the expanded issues at hearing. The parties had until February 28, 2026, to review the additional evidence exchanged in preparation for hearing.

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When the hearing resumed, over the course of the proceedings, Student withdrew portions of Issues 1, 2, and 5 on the record, as follows:

- From Issue 1: that speech and language, and counseling services were not implemented during the 2023-2024 school year, beginning October 27, 2023;
- From Issue 2: that speech services were not implemented during the 2024-2025 school year; and
- From Issue 5: that counseling services were not implemented during the 2025-2026 school year, through November 18, 2025.

Accordingly, references to Student's Issues in this Decision do not include the claims Student withdrew during the hearing.

ISSUES HEARD

1. Did Alhambra deny Student a free, appropriate public education, or FAPE, during the 2023-2024 school year, beginning October 27, 2023, by materially failing to implement the April 12, 2022 individualized education program, or IEP, services of specialized academic instruction?
2. Did Alhambra deny Student a FAPE during the 2024-2025 school year, by materially failing to implement the April 12, 2022 IEP services of specialized academic instruction, and counseling?

3. Did Alhambra deny Student a FAPE by failing to consider Student's independent educational evaluation when deciding whether to exit Student from special education?
4. Did Alhambra deny Student a FAPE, at the IEP team meetings held on January 21 and February 13, 2025, by finding Student ineligible for special education and related services?
5. Did Alhambra deny Student a FAPE during the 2025-2026 school year, through the date the amended complaint was filed, November 18, 2025, by materially failing to implement the April 12, 2022 IEP services of specialized academic instruction, and speech and language?

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

Student was 15 years old, and in ninth grade, at the time of hearing. There was no dispute that Student resided within Alhambra's geographic boundaries at all relevant times. Student's continued special education eligibility under the category of autism was one of the issues in this case. Throughout this Decision, whenever Student's name appeared in a quoted section of an exhibit, her name has been replaced with "Student" to protect her privacy.

STATUTORY FRAMEWORK

A FAPE means special education and related services available to an eligible child that meet state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP

for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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

CASE BACKGROUND

This case involves a student found eligible for special education in elementary school as a student with autism. At least from the beginning of the 2021-2022 school year, when Student was in fifth grade, through November 17, 2025, Student was educated primarily in a general education classroom. Beginning April 12, 2022, Student received both pull-out and push-in special education services.

In 2024, Alhambra conducted Student's triennial assessments. Parent disagreed with the psychoeducational assessment and requested an independent assessment. The independent psychoeducational assessment was completed in October and November 2024, and presented to the IEP team on January 21, 2025.

As a result of the discussion which began during the January 21, 2025 IEP team meeting, and concluded at the IEP team meeting on February 13, 2025, the Alhambra IEP team members determined Student was no longer eligible for special education.

This case followed, in which Student challenged Alhambra's eligibility decision, and whether Alhambra considered the independent psychoeducational assessment in making its eligibility determination. Student also challenged whether Alhambra implemented some elements of her April 12, 2022 IEP during her seventh, eighth, and ninth grade years. The April 12, 2022 IEP amendment, developed by Alhambra when Student was in fifth grade, was the last IEP Parent consented to.

Student was in the middle of ninth grade when she testified in this hearing. She was a soft-spoken, serious young woman. When testifying, occasionally Student's speech was halting. She appeared, at those times, to be considering how to formulate her response to the question posed. Student appeared to understand the questions she was asked by Parent and by the ALJ and answered them thoughtfully. At one point, Student admitted to mapping out her answer to the question of why she needed special education, in advance of the hearing, at her Parent's request. Student used the organizational methods applicable to essay writing that she learned at school to arrange her thoughts and, ultimately, answers to the question of why she believed she needed special education. Student was candid in revealing her testimony preparation, and there was no evidence that Student's testimony overstated her needs, or was unduly influenced by Parent.

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ISSUE 1: DID ALHAMBRA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BEGINNING OCTOBER 27, 2023, BY MATERIALLY FAILING TO IMPLEMENT THE APRIL 12, 2022 IEP SERVICES OF SPECIALIZED ACADEMIC INSTRUCTION?

ISSUE 2: DID ALHAMBRA DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR, BY MATERIALLY FAILING TO IMPLEMENT THE APRIL 12, 2022 IEP SERVICES OF SPECIALIZED ACADEMIC INSTRUCTION AND COUNSELING?

ISSUE 5: DID ALHAMBRA DENY STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR, THROUGH THE DATE THE AMENDED COMPLAINT FILED, NOVEMBER 18, 2025, BY MATERIALLY FAILING TO IMPLEMENT THE APRIL 12, 2022 IEP SERVICES OF SPECIALIZED ACADEMIC INSTRUCTION AND SPEECH AND LANGUAGE?

SPECIALIZED ACADEMIC INSTRUCTION

Student alleged Alhambra failed to implement her specialized academic instruction, in reading, writing, and math, as required by Student's last consented to IEP

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dated April 12, 2022, during seventh, eighth, and ninth grades, from October 27, 2023, through November 18, 2025. Student asserts the April 12, 2022 IEP was not properly implemented because:

- the pull-out specialized academic instruction was not based only on Student's class assignments,
- some of the essays Student wrote for her pull-out specialized academic instruction were typed rather than handwritten,
- the specialized academic instruction assignments in reading, writing, and math were not at grade level,
- during part of the 2023-2024 school year, the specialized academic instruction was implemented using a goal to which Parent had not consented, and
- Student did not receive the correct number of specialized academic instruction minutes required each week during the 2023-2024 school year or the correct amount of counseling during the 2024-2025 school year, or group speech services during the 2025-2026 school year.

Student argues that each of these items constituted a material failure to implement Student's specialized academic instruction, and thus, violated the IDEA and California special education laws. Alhambra argues Student did not prove Alhambra materially failed to implement her specialized academic instruction.

FAILURE TO IMPLEMENT MUST BE MATERIAL

A district's failure to implement a child's IEP may violate the IDEA. (*Van Duyn ex rel. Van Duyn v. Baker Sch. Dist., 5J*, (9th Cir. 2007) 502 F.3d 811, 815.) However, only a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Van Duyn, supra*, at p. 822.)

LAST CONSENTED TO IEP

The last consented to IEP was the April 12, 2022 amendment to Student's December 8, 2021 IEP. The April 12, 2022 IEP offered 720 minutes per week of specialized academic instruction, which included 300 minutes per week of "push-in" services for English language arts, and 300 minutes per week of push-in services for math. Push-in services consisted of special education instructors collaborating during the general education teachers' instruction in the general education classroom. Student also received 60 minutes per week of specialized academic instruction in math and 60 minutes per week for reading and writing combined. Pull-out special education intervention was provided outside of the general education classroom. The pull-out instruction targeted areas in which Student needed additional help in her general education coursework, as well as work generally on Student's IEP goals.

In seventh and eighth grades, Student's specialized academic instruction was provided by special education teacher Gabriel Villasenor. Special education teacher, Jose Martinez, provided Student's ninth grade specialized academic instruction.

NO FAILURE TO IMPLEMENT SPECIALIZED ACADEMIC INSTRUCTION IN READING AND WRITING BASED ON FAILURE TO TIE SPECIALIZED ACADEMIC ASSIGNMENTS TO CLASS ASSIGNMENTS ONLY

Student alleged Alhambra did not properly implement Student's specialized academic instruction during Student's seventh, eighth, and ninth grade years, because the specialized academic instruction assignments in reading and writing were not directly tied to her general education assignments. Ultimately, Student did not challenge her ninth grade specialized academic instruction on this basis.

Parent pointed to the sixth grade specialized academic instruction assignments which, according to Parent, were directly tied to reading assignments being discussed in her general education class. The April 12, 2022 goals do not require the specialized academic instruction to be directly tied to Student's general education classwork assignments.

The IDEA defines specially designed instruction as adapting, as appropriate, the content, methodology or delivery of instruction to meet the unique needs of a child with a disability, and to ensure access of the child to the general education curriculum so the child can meet the educational standards that apply to all children. The term includes instruction conducted in the classroom and other settings. (20 U.S.C. 1401(29)(A); 34 C.F.R., 300.39(a)(3).) Student offered no evidence, other than Parent's testimony, that Student's specialized academic instruction was required to be based solely on Student's class assignments. It was Student's obligation to prove each element of her allegations. Despite Student's argument to the contrary, Alhambra did not have an obligation to call witnesses or offer other evidence in this Student-filed case.

Here, Student did not call any of the April 12, 2022 IEP team participants as witnesses to corroborate Student's contention that the specialized academic instruction was meant to be limited to assignments tied to classwork only. Nor did Student call the sixth grade specialized academic instruction teacher, or any other witness, to testify regarding how specialized academic instruction was implemented in sixth grade, how the assignments shown in the work samples were tied to Student's general education assignments, or whether directly tying specialized academic assignments to Student's class assignments was expected or required.

Student also failed to offer persuasive documentary evidence establishing that the specialized academic instruction assignments were intended to be focused only on Student's classwork assignments. The notes for the April 12, 2022 IEP, mentioned the pull-out services being used to provide extra help to Student on specific concepts in the general education classwork, but did not limit the specialized academic assignments to specific assignments from Student's general education class. This is demonstrated by the IEP notes also mentioning using the pullout services to work generally on goals.

Student's sixth grade work samples offered examples of how Parent believed the seventh and eighth grade specialized academic instruction should have been implemented. Parent described these work samples as being specialized academic instruction assignments that were based on the general education class assignments. According to Parent, the special education teacher in sixth grade created lesson plans that incorporated Student's general education class assignments. However, this testimony was not corroborated by the special education teacher or anyone else.

It was evident from her testimony that Parent preferred Student's sixth grade special education teacher's method of instruction. However, a school district is not

required to use the methodology a parent prefers when providing special education services for a child. School districts are “entitled to deference in deciding what programming is appropriate as a matter of educational policy.” (*J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 945, n.5.) “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.” (*R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122.)

Although Student’s allegation was stated as a challenge to all of Student’s specialized academic instruction, the evidence established she was challenging the method of implementing the pull-out special education instruction in the areas of reading and writing in seventh and eighth grades. Neither the IDEA, nor California special education law, require Student’s specialized academic instruction to be based directly on the assignments in a student’s general education class. The IDEA specifically states that special education teachers have the flexibility to adapt the content, methodology or delivery of instruction, as appropriate, to the student’s needs to ensure the child’s access to the general education curriculum so the child can meet the educational standards that apply to all children. (20 U.S.C. 1401(29)(A); 34 C.F.R., 300.39(a)(3).)

As required by the April 12, 2022 IEP amendment goals, the work samples showed assignments intended to develop Student’s abilities to understand the main ideas of the reading through the short answer questions that followed the reading. The questions required Student to identify how the author conveyed the main ideas, through the key ideas and details. Work samples also required Student to write three

to five paragraph essays using applicable writing, grammar and spelling conventions. Student did not prove there was a failure to implement the April 12, 2022 IEP reading and writing goals because the pull-out specialized academic instruction assignments were not directly tied to classwork assignments.

Student also did not establish that failing to tie specialized academic instruction to classwork assignments constituted a material failure to implement the IEP. Pull-out specialized academic instruction in reading and writing amounted to only 60 minutes per week of Student's reading and writing specialized academic instruction. Student also received 300 additional minutes weekly of specialized academic instruction in reading and writing that was "pushed in" to the general education classroom and provided in direct conjunction with Student's general education instruction. Therefore, even had Student proven that specialized academic instruction was required to be tied to class assignments, which she did not, Student did not prove that failing to tie the pull-out portion of her specialized academic instruction directly to class assignments constituted a material failure to implement her IEP, given that five times the amount of specialized academic instruction was pushed in to her general education and directly tied to classwork.

Student did not prove the April 12, 2022 IEP specialized academic instruction in reading or writing was required to be tied to classwork assignments. Therefore, Student could not, and did not, prove there was a material failure to implement Student's IEP on this basis.

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NO FAILURE TO IMPLEMENT SPECIALIZED ACADEMIC
INSTRUCTION BASED ON STUDENT OCCASIONALLY TYPING
SPECIALIZED ACADEMIC INSTRUCTION WRITING ASSIGNMENTS

Student asserts that the April 12, 2022 IEP required Student to “manually” write, meaning handwrite, her writing assignments, as opposed to typing them. Therefore, Student argues, writing assignments completed using a computer constituted a material failure to implement Student’s operative IEP.

Parent objected to Student being asked to produce typed work using a computer. The April 12, 2022 IEP notes corroborated Parent’s expressed concern that Student’s handwriting was “not good.” Alhambra offered a goal focused on improving Student’s handwriting but Parent did not want that.

The evidence established that Parent’s actual concern was her inability to trust that typed work, provided to her as Student’s work samples, would not be tampered with. Parent worried that work samples typed on a computer could be altered as opposed to just corrected by Student’s special education teacher after Student submitted them. Student offered no persuasive evidence that work samples Parent received were altered. Parent testified she feared they might have been, but admitted she had no evidence that alteration had ever occurred.

Only four of the 18 specialized academic instruction assignments submitted as exhibits of seventh and eighth grade work samples were typed. Student offered no evidence of the total proportion of handwritten versus typed work required during seventh and eighth grade. Student began to type essays in seventh grade and described her writing process. The work samples offered as evidence did not display

all of the steps Student completed in advance of the essays. Student went through a planning and editing process during her specialized academic instruction for each typed essay. According to Student, she worked with Villasenor to plan, research, write and refine the drafts over several days to several weeks, in some instances. Some of the work is shown in Student's work samples. Much of it is handwritten. Student completed some of the work on a white board. Student's handwritten work in those instances was not captured as work samples.

Student's April 12, 2022 writing goal described writing a three to five paragraph response to a prompt, using writing, grammar and spelling conventions. Parent pointed to notes in the April 12, 2022 IEP that captured discussions of Parent's preference for handwritten work. The April 12, 2022 IEP amendment notes indicate Alhambra removed the word "typing" from the writing goal pursuant to Parent's expressed preference for Student's work to be handwritten. However, those discussions occurred at the end of Student's fifth grade year. Notes of the IEP team discussion also show Parent was advised that, as Student advanced in middle school, she would be expected to type more of her work for a variety of reasons. Additionally, Parent was informed that all state testing in middle school would be done on a computer.

Here, Student advanced from the latter part of fifth grade through the first half of ninth grade, using an operative IEP amendment from fifth grade. While the word "typed" was removed from the April 12, 2022 IEP writing goal, Parent offered no evidence that typing some of the specialized academic instruction assignments constituted a material failure to implement Student's IEP.

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Student offered no documentary evidence, or witness testimony, establishing that the proportion of work Student typed, as opposed to work she wrote by hand, constituted a material failure to implement Student's specialized academic instruction in writing. The focus of the goal was not the method of putting the words on the paper. The focus of the goal was on learning how to properly structure and execute written work in an academic setting. This is reflected by the emphasis the goal placed on writing using the accepted conventions of writing, grammar and spelling.

Furthermore, Courts have acknowledged that the materiality standard allows for changes in how an older IEP is implemented as a child progresses from elementary school to middle school, and to high school, so long as the services provided approximate the Student's old IEP as closely as possible. (*Ms. S. ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35, superseded by statute on other grounds, see, 20 U.S.C. § 1414(d)(1)(B))

["Although the "stay-put" provision is meant to preserve the status quo, we recognize that when a student transfers educational jurisdictions, the status quo no longer exists ... if it is not possible for the new district to implement in full the student's last agreed-upon IEP, the new district must adopt a plan that approximates the student's old IEP as closely as possible."];

R.F. Frankel v. Delano Union Sch. Dist. (E.D. Cal. 2016) 224 F.Supp.3d, 979, citing, *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [When the child's last implemented IEP cannot be implemented due to a change in

circumstances, stay-put requires that the student receive a placement that, as closely as possible, replicates the last placement.]; *John M. v. Board of Education of Evanston Tp. High Sch. Dist. 202* (7th Cir. 2007) 502 F.3d 708, 714-715,

["A child's interim educational regime must produce as closely as possible the overall educational experience enjoyed by the child under his previous IEP. To achieve that result, we must recognize that educational methodologies, appropriate and even necessary in one educational environment, are not always effective in another time and place in serving a child's continuing educational needs and goals."];

L.J. by N.N.J. v. Sch. Board. of Broward County, (11th Cir. 2019) 927 F.3d 1203, 1213. ["The IDEA recognizes that a child's individual circumstances and 'unique needs' do not remain static as the child progresses from grade to grade."]

The legal requirement is that special education and related services need only be provided "in conformity with" the IEP. (20 U.S.C. § 1401(9).) The Ninth Circuit Court of Appeals has interpreted this language to mean there is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of FAPE. (*Van Duyn, supra*, 502 F.3d at p. 821.)

As Student progressed from elementary school through middle school and high school, new writing skills, such as self-editing and more nuanced fact analyses were required, as was typing essays. These were natural progressions in Student's writing instruction through middle school and the first part of ninth grade. Combining these essay writing approaches with the skills specified in Student's fifth grade goal constituted work in conformity with Student's April 12, 2022 IEP, given Student's changed status as a middle school, then high school student during the required

implementation period. Student offered no evidence that occasionally typing assignments resulted in work that was not in conformity with the fundamental skills of developing written essays.

The evidence established that the typed specialized academic assignments Student completed in seventh and eighth grade were a close approximation of Student's April 12, 2022 IEP given Student's changing status and needs through middle school and early high school. Here, no persuasive evidence was offered that typing some writing assignments during specialized academic instruction was a material failure to implement Student's April 12, 2022 IEP in the seventh or eighth grades. Student did not include any evidence of typed work during ninth grade through November 18, 2025, or make any arguments about Student's IEP implementation being materially impacted due to typing essays during the 2025-2026 school year, through November 18, 2025.

INADEQUATE PROOF WORK WAS NOT AT GRADE LEVEL IN SEVENTH OR EIGHTH GRADE

Student asserts Alhambra failed to provide the grade level specialized academic instruction assignments required by the April 12, 2022 IEP. The April 12, 2022 IEP team discussions included full team agreement that Student's specialized academic instruction assignments would be at grade level. According to Student, Alhambra failed to provide Student grade level work during seventh and eighth grade specialized academic instruction, which resulted in Alhambra's material failure to implement that IEP in seventh and eighth grades. Student did not assert Alhambra failed to provide grade level specialized academic instruction during ninth grade.

Student attended seventh grade during the 2023-2024 school year and eighth grade during the 2024-2025 school year. Student offered samples of her seventh, and eighth grade specialized academic instruction assignments as evidence that Student's specialized academic instruction was not at grade level. Student did not prove the specialized academic instruction assignments were not at Student's grade level in either seventh or eighth grades.

Student's seventh grade reading and writing work samples included a range of different types of work. One was a worksheet on "The Story of a Stuffed Elephant," which included an excerpt from the story and three short-answer questions regarding the story. Another assignment involved the story "Frankenstein: The Modern Prometheus," which included a one paragraph introduction to the historical context of the novel, a three-paragraph excerpt from the novel, and three short-answer questions. Additional samples included worksheets on citing text evidence, adding sensory details to narrative writing, and revising written work. Student's work samples also included a six paragraph essay on Inflation. None of the samples stated the grade level of the assignment. Student offered conjecture from both Parent and Student that the assignments were not at the seventh grade level, but no evidence from an educator or other person qualified to identify the grade level of the work. Parent had no credential, training or experience as a teacher.

Student also failed to offer persuasive evidence that the eighth grade specialized academic instruction assignment work samples were not at grade level. The eighth grade work samples ranged from a short letter to an eighth grade teacher at the beginning of the eighth grade year, to longer essays. Short answer writing assignments

to work on reading goals, were based on stories including, *The Adventure Begins*, *The Gift of the Magi*, a biographical article about Benjamin Franklin, and the *Legend of Sleepy Hollow*. The Benjamin Franklin worksheet required Student to use a graphic organizer to find the main idea and add supporting facts in the outer circles. The reading sample from the *Gift of the Magi* was three and a half pages long and required Student to answer questions identifying the central theme of the story and language conveying other main facts.

Longer essays included one on *Alebrijes*, which are Mexican ceramic art pieces representing mythical animals. This essay was written in English for Student to then translate into Spanish. Student was enrolled in a Spanish immersion course for seventh and eighth grades, and asked Villasenor to help her refine the essay in English during her specialized academic instruction class, before Student translated it into Spanish. Student also wrote a fictional story and an essay on why Students should be allowed to choose their own classes. Several documents showing Student's work planning and refining this essay were included in Student's evidence. Student also wrote a shorter four-paragraph essay entitled, "Why is Non-violence Courageous". As with the seventh-grade assignments, Student offered only Parent and Student's opinions as to the fact that the assignments were not eighth grade level work.

Parent also asserted Student's specialized academic instruction in math during seventh and eighth grades was not at grade level. Student offered seventh and eighth grade math work samples as evidence that the specialized academic instruction in math was not at Student's grade level. The seventh grade math work samples showed Student's work translating word problems into equations, and equations into word problems, which Student was then expected to solve as required by the April 12, 2022

IEP math goal. The eighth grade math work sample also required Student to solve word problems by translating them into equations and solving the equations. The eighth grade math worksheets stated they were pre-Algebra, but none of the math worksheets offered into evidence noted their grade level.

Only Parent's and Student's testimony supported Student's allegation that the specialized academic instruction math work samples were not at grade level. Parent's assertion the assignments were not at grade level was based solely on being told by Student they were not grade level work. Student testified she did not think the assignments were grade level work but offered no evidence that the work was not in-line with the required grade level standards. Parent also stated the work was not grade level when compared to Student's other seventh grade work. However, Parent did not offer seventh or eighth grade math assignments from Student's other classes for comparison. Contrary to Student's argument, it was not obvious, simply by looking at the work samples, that they did not meet middle school grade level standards.

Student did not call special education teacher Villasenor to testify as to the grade level of the work samples. Parent was given multiple opportunities to do so, even after the witness disclosure deadline had passed, in an effort to allow her every opportunity to prove her case. Parent declined on the grounds that it would take too long. Nor was any other educational expert called to offer an opinion on the grade level of the seventh and eighth grade work samples. Similarly, Student offered no evidence tying the allegations of work being offered below grade level to a material failure to implement the operative IEP.

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Student failed to prove that Student's specialized academic instruction in reading, writing and math were not at grade level during the 2023-2024 or 2024-2025 school years. During hearing, Parent conceded she was not contesting that Student's ninth grade specialized academic instruction was at grade level. Nor did Student offer any evidence that the ninth grade specialized academic instruction assignments failed to meet grade level standards.

Therefore, Student did not prove that Alhambra materially failed to implement the April 12, 2022 IEP's requirement that specialized academic instruction be offered at grade level during the period from October 27, 2023, through February 18, 2025.

INADEQUATE PROOF OF MATERIAL FAILURE TO IMPLEMENT
SPECIALIZED ACADEMIC INSTRUCTION DUE TO USE OF THE
WRONG GOAL DURING THE 2023-2024 SCHOOL YEAR

Student alleges that Villasenor implemented the wrong goals during part of Student's seventh grade year, resulting in a material failure to implement the operative April 12, 2022 IEP amendment specialized academic instruction requirements for reading, writing, and math. Student was unable to identify with certainty when she discovered the alleged wrong goals were being implemented, which goals Villasenor implemented, or the time period during which the allegedly wrong goals were implemented. Perhaps most importantly, however, Student did not prove Alhambra materially failed to implement Student's specialized academic instruction during the 2023-2024 school year.

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Student offered little evidence to prove that special education teacher Villasenor materially failed to implement the requirements of the operative IEP's specialized academic instruction. Parent testified she believed Villasenor implemented the wrong goals, but could not recall when she discovered this. Parent initially testified that she discovered the error during an IEP team meeting in March of 2024. She could not recall which day in March. Later in her testimony, Parent stated she found out Villasenor was implementing the wrong goal during the December 18, 2023 IEP team meeting. At another point, Parent testified she discovered the error sometime between December 2023 and March of 2024. Parent also testified that she discovered the error when she received a packet, of what Parent described, as Student's specialized academic instruction progress reports from May of 2024. Parent could not recall exactly when she received this packet.

Additionally, Parent testified both that Villasenor implemented the December 8, 2021 IEP specialized academic instruction goals, and that he implemented the December 1, 2022 IEP specialized academic instruction goals. Parent did not consent to either of these IEPs. Parent's concern was that Villasenor implemented a goal to which she had not consented. However, Parent offered no reliable evidence on which to base a conclusion that the specialized academic instruction assignments Student was provided, failed to implement the goals stated in the April 12, 2022 IEP.

Student offered a packet of documents she identified as "progressive report and work samples" to prove a material failure to implement the specialized academic instruction during seventh grade. The packet included three separate pages with goal statements that were followed by a paragraph allegedly describing Student's progress on her work. The goal statements and progress reports were on otherwise blank paper, were not dated, and were unsigned. They were not sent via email, so neither their

origin, nor the date sent was traceable. According to Parent, the fact that the goal stated on the pages in the packet differed from the wording of the April 12, 2022 IEP goal proved the specialized academic instruction being implemented did not provide the instruction required by the operative IEP. Student was not able to prove that Villasenor wrote the documents she identified as progress reports. Nor did the progress reports Student produced prove Student did not receive the specialized academic instruction required by the April 12, 2022 IEP amendment.

Student offered no persuasive evidence Villasenor wrote the goal statements or progress reports. Parent testified, both, that Villasenor wrote the goal statements, and that Parent was not sure who wrote them. Parent could not testify to the original source of the documents. Parent initially said Villasenor gave the documents to Student, but later testified Student's general education teacher gave Student the documents and Student brought them home from school. Parent did not know who gave the general education teacher the documents, or when.

Similarly, Parent pointed to the December 18, 2023 IEP section on Preacademic/ Academic/ Functional Skills as proof Villasenor did not implement the specialized academic instruction requirements of the operative IEP. Parent asserted that, because the goals described in this section of the December 18, 2023 IEP do not match the April 12, 2022 IEP, the seventh grade academic instruction failed to offer instruction required by the operative IEP. Parent, again, however, failed to prove the connection between the two, or even that Villasenor wrote the narratives. Again, Villasenor was not called to testify that he wrote the Preacademic/Academic/ Functional Skills section narratives in the December 18, 2023 IEP. The IEP documents did not identify the author of that section. It only stated that Villasenor reviewed progress toward previous goals. Without Villasenor's testimony, there was no opportunity to explore why a goal with

different wording from that in the April 12, 2022 IEP was described in the December 18, 2023 IEP as the prior goal. However, the description of a different prior goal in the IEP does not prove Student did not receive the specialized academic instruction required by the April 12, 2022 IEP amendment.

The reading and writing work samples demonstrated that Student's specialized academic instruction worked on the April 12, 2022 goal concepts in both subjects. The operative April 12, 2022 IEP amendment reading goal, developed when Student was in the fifth grade, was: "SAI Goal #1 – Reading Literature – Key Ideas and Details: By December 2022, Student will identify the main idea and four key facts of a grade level reading text. This will be measured by monthly reading samples at 80% accuracy."

The April 12, 2022 IEP amendment writing goal was: "SAI Goal #2: By December 2022, given a grade level prompt regarding informational text [*s/c*] Student will write a 3 to 5 paragraph response that follows the conventions of writing, grammar and spelling." The IEP stated that this would be measured by bi-monthly samples at 80 percent accuracy on a grade level rubric.

As previously discussed, the reading worksheets Student identified as seventh grade work, included excerpts from *The Story of the Stuffed Elephant*, *Frankenstein*, and worksheets focused on citing text evidence. All required that Student read passages from fiction and identify main ideas and key facts.

Student also identified seventh grade specialized academic instruction writing assignments in which she wrote a three to five paragraph essay in response to a grade level prompt that followed the conventions of writing, grammar, and spelling. Student identified her essay on Inflation as a seventh grade assignment. This six paragraph essay was written over several weeks during Student's specialized academic instruction

pull-out sessions. Over that time, Student researched and refined the essay to conform to the writing, grammar and spelling conventions. Student's other writing work samples, discussed previously, demonstrated Student received instruction on the foundations of writing, grammar and spelling conventions.

MATH GOAL

The April 12, 2022 IEP amendment math goal was,

"SAI Goal #3 – Math – Write and interpret grade level numerical expression: By December 2022, when given 10 multi-step word problems, Student will independently write simple expressions that record calculations with numbers and interpret the numerical expressions to solve the word problems as measured by student work samples and/or teacher observations in 4 out of 5 trials with 80% accuracy."

Student offered no persuasive evidence that the goal statement in the packet accompanied by the progress report differed from the April 12, 2022 IEP amendment goal. Furthermore, as with the reading and writing goals, Student failed to establish how the description of a different prior goal in the the December 18, 2023 IEP proved Student did not receive the math academic instruction required by the April 12, 2022 IEP amendment.

Student identified the two math work samples produced at hearing as seventh grade specialized academic instruction assignments. The assignments appeared to follow the requirements of the April 12, 2022 IEP math goal. The assignments asked Student to write simple expressions that record calculations with numbers and interpret the numerical expressions to solve the word problems.

Student offered no testimony from an educational expert, or any other witness, establishing the math work samples Student testified were completed in her pull-out specialized academic instruction materially differed from the goals stated in the April 12, 2022 IEP. Nor did any other evidence admitted establish a material failure to implement Student's seventh grade specialized academic instruction in math.

EVIDENCE PROVED OPERATIVE GOALS WERE MATERIALLY IMPLEMENTED

Parent testified that Villasenor admitted he "followed the wrong goal." However, she did not recall when this conversation took place, and offered no corroboration for the self-serving statement. Nor did she specify which goal Villasenor admitted to incorrectly implementing. Villasenor was not called to testify to authenticate the goal and progress statements or IEP prior goal statements; to authenticate an admission that he implemented incorrect goals; or to clarify which goal statements were used to develop Student's specialized academic assignments in seventh grade. Nor did Villasenor's testify as to the instructional focus of Student's seventh grade specialized academic instruction. Villasenor also did not testify to the period, if any, during which any allegedly incorrect goals were implemented. As previously discussed, Student was offered the opportunity to call additional witnesses multiple times throughout the hearing.

Student also failed to offer persuasive evidence of the length of time during which any incorrect goals were allegedly implemented. Although at one point Parent testified Villasenor began to implement the goals from the operative IEP in April of 2024, Student offered the work samples from May of 2024 with the undated, unsigned goal statements as proof that incorrect goals were being implemented.

Student conceded that the correct goals were implemented in eighth and ninth grades. The preponderance of the evidence demonstrated that Alhambra materially implemented specialized academic instruction required by the April 12, 2022 IEP amendment during Student's seventh grade year.

Therefore, Student failed to establish Alhambra denied her a FAPE by materially failing to implement the specialized academic instruction required by her April 12, 2022 IEP, reading, writing or math, at any time between October 27, 2023 and February 18, 2025.

NO PROOF THAT REQUIRED AMOUNT OF TIME FOR SPECIALIZED
ACADEMIC INSTRUCTION, OR COUNSELING, OR REQUIRED GROUP
SPEECH AND LANGUAGE THERAPY WERE NOT PROVIDED

SEVENTH GRADE SPECIALIZED ACADEMIC INSTRUCTION

Student asserts she did not receive any specialized academic instruction from August 8, 2023, which was the beginning of the 2023-2024 school year, until after October 10, 2023. To support this claim, Student relied on an email dated October 9, 2023, from Villasenor to Parent inquiring whether Parent had further questions "since our last communication," and Parent's October 10, 2023 reply accusing Villasenor of failing to provide specialized academic instruction up to that date. According to Parent's testimony, Student began receiving specialized academic instruction after the October 10, 2023 email every Friday for 30 minutes.

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The timeframe for Student's claims in this case spans the period from October 27, 2023, through November 17, 2025. Therefore, any failure to provide specialized academic instruction prior to October 27, 2023, is irrelevant to these proceedings. Furthermore, Parent's testimony regarding the amount of specialized academic instruction provided to Student after October 10, 2023, is uncorroborated. Parent was unsure of the date specialized academic instruction services allegedly resumed. Nor did any evidence corroborate Parent's testimony that Student received only 30 minutes per week of specialized academic instruction after October 10, 2023.

Student offered no other evidence that Alhambra failed to provide the correct amount of specialized academic services prescribed by the April 12, 2022 IEP. No service logs showing the number of specialized academic instruction sessions Student attended, or dates instruction was not provided, were offered into evidence. Neither Villasenor, nor any other witness was called to corroborate the alleged failure to provide the required amount of specialized academic instruction during Student's seventh grade year. Stephanie Richardson, Alhambra's preschool through eighth grade director of special education, did not testify, or offer documentary evidence, that Student missed any 2023-2024 specialized academic instruction sessions. Student failed to establish the dates of specialized academic instruction sessions missed, or the number of service minutes not provided.

Additionally, Student failed establish a material failure to implement specialized academic instruction. Parent's testimony failed to differentiate between pull-out and push-in specialized academic instruction services and never discussed the specialized academic instruction Alhambra pushed in to her general education classes. Without information regarding the total amount of specialized academic instruction Student

received, versus the amount allegedly missed, Student was unable to prove Alhambra materially failed to implement the specialized academic instruction offered in the April 12, 2022 IEP.

Thus, Student did not prove Alhambra denied her a FAPE by failing to provide the amount of specialized academic instruction required by the April 12, 2022 IEP during the 2023-2024 school year. Student did not assert a failure to provide the required amount of specialized academic instruction during the 2024-2025 or 2025-2026 school year, through November 18, 2025, at hearing.

EIGHTH GRADE COUNSELING SERVICES

Student asserts Alhambra did not provide all counseling services required by the April 12, 2022 IEP during the 2024-2025 school year, when Student was in eighth grade. According to Parent, School Psychologist Art Pangilinan, who was commonly called "Mr. Art," failed to provide six months of counseling. The April 12, 2022 IEP offered Student counseling for 30 minutes twice a month. Parent testified she believed Student missed six months of services because Student told her so.

Student offered a series of emails exchanged between Parent and Pangilinan on April 18, 2025, to support the claim that eighth grade counseling services were not provided. Parent's handwritten comments on the exhibit were disregarded as argument following Alhambra's objection.

In one of the April 18, 2025 emails, responding to Parent's accusation that Student had not received counseling for six months, Pangilinan states he had not seen Student for "about one month" because he was covering multiple schools. Pangilinan's

email said he was planning to make up the missed sessions. Ultimately, neither Student nor Alhambra offered evidence of the number of counseling sessions Student did not receive, or the dates sessions were not provided. Pangilinan was not called to verify the statement in the email. Thus, Pangilinan's emailed statements regarding missed sessions are uncorroborated hearsay and cannot form the basis of a finding of fact. (Cal. Code Regs., tit. 5, § 3082 subd. (b).)

Parent's testimony that Student missed six months of counseling sessions was self-serving and uncorroborated, and, as such, was not the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." As a result, her testimony was not sufficient in itself to support a conclusion Student missed six months of service. ((Cal. Code Regs., tit. 5, § 3082 subd. (b).) Student's own testimony did not include any information on missed counseling sessions. Student offered no persuasive documentary evidence establishing Alhambra failed to provide counseling services to Student during the 2024-2025 school year.

Even if the email had established that some counseling was missed, which it did not, Student did not prove the failure to provide services constituted a material failure to implement the counseling services required by the April 12, 2022 IEP amendment. Student was scheduled to receive only two counseling sessions per month. One month of missed counseling could have constituted two sessions, or, due to a scheduled holiday, such as Spring break, may have resulted in only one missed counseling opportunity. Not only did Student fail to prove Alhambra denied her counseling sessions during the 2024-2025 school year, she did not prove any loss was a material failure to implement the counseling required by the April 12, 2022 IEP, or a denial of FAPE.

NINTH GRADE SPEECH AND LANGUAGE SERVICES

Student asserts Alhambra failed to provide speech and language services during the 2025-2026 school year, through November 18, 2025, because Student was not given group speech therapy as required by the April 12, 2022 IEP goal. Alhambra argues that Student did not prove her claim that the speech and language services from the beginning of the 2025 school year through November 18, 2025, materially failed to meet the requirements of the operative IEP.

The April 12, 2022 IEP offered 240 minutes per month of speech services, provided on a "push-in / pull-out model to allow for interactions and modeling from grade level peers." The "Offer of FAPE" page for the April 12, 2022 IEP amendment indicates the speech services were to be provided in a group setting. The goal, referred to as SLP #1 was: "By December 2022, to improve pragmatic language skills, when presented with a story, social situation, or while role playing, Student will identify and/or explain the perspective of others in four out of five trials given minimum cues."

Student offered a series of emails exchanged between Parent, and the high school speech pathologist, Heather Flanders, between December 18, 2025, and January 6, 2026, as evidence that Alhambra failed to provide group speech services required by the April 12, 2022 IEP. The original email, dated December 18, 2025, was from Flanders, offering Parent a report on Student's speech and language progress. An exchange between Parent and Flanders on January 5, 2026, addressed Parent's concern that Student's speech sessions were not group sessions. Flanders explained that other students in the pull-out sessions sometimes had schedule conflicts. The email did not state that Student did not receive group sessions, or any number of sessions during which Flanders met with Student alone.

Flanders was not called as a witness to verify her email comments regarding the number of other attendees in Student's speech sessions. Therefore, her email comments in this regard are unreliable hearsay evidence which cannot be used as a basis for a finding of fact in a special education hearing. (Cal. Code Regs., tit. 5, § 3082 subd. (b).) Furthermore, no evidence established Flanders was referring to Student's speech cohort between August 12, 2025, when school began, and the November 18, 2025 end date for claims in this case.

Nor did Student offer any evidence of how much of the speech services were implemented as push-in speech services, as opposed to a pull-out service. Push-in services would have, by definition, involved peers in the classes in which Student received the push-in services. Therefore, the materiality of any number of speech sessions in which Student did not have group was also not established.

No IEP team member, speech pathologist, or any other district witness testified as to the how the push-in pull-out model was being implemented during the beginning of Student's ninth grade year. Nor did Student testify about how often Student received speech services in which she was the only attendee. As Student did not offer evidence establishing the number of speech sessions that did not involve a group, Student did not meet her burden of proving either that speech services due through November 17, 2025 failed to comply with the April 12, 2022 IEP, or that Alhambra denied her a FAPE by materially failing to comply with the April 12, 2022 IEP group speech services requirement.

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ALHAMBRA'S COMPENSATORY EDUCATION OFFER

On February 11, 2026, Special Education Director for preschool through eighth grade, Stephanie Richardson, sent Parent a "prior written notice" offering Student compensatory education. As of February 11, 2026, the hearing in this case had begun, but had been continued to March 18, 2026.

Richardson's prior written notice offered Student compensatory education that could be used for specialized academic instruction, speech and language, and counseling. Prior written notice is required when the school district proposes, or refuses, to initiate a change in the provision of a free appropriate public education of a child with special needs. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503; Ed Code §§ 56500.4.)

Richardson's letter denied Parent's allegation that Alhambra failed to provide any services to Student. During testimony, Richardson explained she reviewed service logs for the time period covered by this case and spoke to Student's service providers. She saw some gaps in the service logs during a period when computerized logging was not working, and logs were kept by hand. Richardson stated she believed the required service minutes were made up. According to Richardson, Student lost no required specialized academic instruction.

Alhambra's February 11, 2026 prior written notice denied any failure to implement services required by Student's IEP. Richardson emphasized the offer was an effort to collaborate with Parents and was a compromise on Alhambra's part. During the hearing, the ALJ asked Parent if she believed 200 hours of compensatory education was the amount due to Student. Parent said no.

Parent did not offer any service logs from Alhambra showing missed specialized academic instruction, counseling, or specialized academic instruction services during the 2024-2025 school year. Moreover, the evidence did not otherwise establish that Student failed to receive required services. Nor did Student introduce any other evidence such as Parent's, or Student's, personal calendars showing dates services were not provided. No Alhambra staff members, including Pangilinan, Villasenor, Martinez or Flanders were called to testify to the services provided to Student.

Alhambra's February 11, 2026 letter to Parent, specifically denied there was a service shortfall, but offered a compromise. The letter did not establish that Student was owed compensatory education. Furthermore, evidence of an offer to compromise a claim of any type of loss, is inadmissible to prove that the person offering the compromise amount is liable for the loss. (Ev. Code § 1152, subd. (a).) Here, to establish Alhambra owed compensatory education, Student had the burden to prove that services were not received, and that any services not provided were a material failure to implement the IEP. Student failed to meet this burden.

Student failed to prove Alhambra denied her a FAPE during the 2023-2024, 2024-2025, and 2025-2026 school years, beginning October 27, 2023, through November 18, 2025, by materially failing to implement the April 12, 2022 IEP services of specialized academic instruction, counseling, or speech and language services.

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ISSUE 3: DID ALHAMBRA DENY STUDENT A FAPE BY FAILING TO CONSIDER STUDENT'S INDEPENDENT EDUCATIONAL EVALUATION WHEN DECIDING WHETHER TO EXIT STUDENT FROM SPECIAL EDUCATION?

Dr. Betty Bostani conducted an independent psychoeducational evaluation of Student in October and November of 2024. On January 21, 2025, Alhambra convened an IEP team meeting to hear Dr. Bostani present the report concerning her independent psychoeducational evaluation of Student. Student asserts Alhambra failed to consider Bostani's opinion when deciding Student no longer qualified for special education. Alhambra contends it considered Bostani's input but disagreed with it.

If the parent obtains an independent educational evaluation at public expense, or shares an evaluation obtained at private expense with the public agency, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. (34 C.F.R. § 300.502(c)(1).)

Bostani presented her report to the IEP team, including Parent. The entire January 21, 2025 IEP team meeting was devoted to the team listening to Bostani's presentation of her report and asking questions. Richardson, Villasenor, and Pangilinan asked Bostani questions. The IEP meeting reconvened on February 13, 2025, when the IEP team, including Parent, continued the discussion of Bostani's report and Student's eligibility for special education.

Here, as with the other alleged FAPE denials, Student offered little evidence, other than her own uncorroborated testimony and the uncorroborated independent psychoeducational evaluation report, to prove Alhambra did not consider the

independent psychoeducational report. Student chose not to call Bostani to testify at the hearing, despite twice being given the opportunity to request Bostani's testimony after the witness disclosure deadline. Parent claimed Bostani was busy, and it would take too much time to call her. As a result, Bostani did not describe her interactions with Alhambra. Richardson's testimony that the IEP team considered Bostani's report was not refuted.

Student appears to be arguing that the fact the IEP team did not follow Bostani's recommendations, which, according to Parent, included Student's continued eligibility for special education, meant it did not consider her report. However, when presented with an outside expert's report, a school district need only review and consider the report; it need not follow its recommendations. (*G.D. v. Westmoreland Sch. Dist.* (1st Cir. 1991) 930 F.2d 942, 947.) Student did not prove Alhambra failed to consider Bostani's report when it determined Student was no longer eligible for special education.

Therefore, Student did not prove Alhambra denied Student a FAPE.

ISSUE 4: DID ALHAMBRA DENY STUDENT A FAPE AT THE IEP TEAM MEETINGS HELD ON JANUARY 21 AND FEBRUARY 13, 2025, BY FINDING STUDENT INELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES?

Student asserts Alhambra denied Student a FAPE by inaccurately finding Student no longer qualified for special education at the IEP team meeting which began on January 21 and concluded on February 13, 2025. Alhambra argues Parent did not prove Student continued to be eligible for special education and related services.

ASSESSMENTS AND IEP TEAM MEETING TO DETERMINE ELIGIBILITY

If an IEP team believes that a student is no longer eligible for special education, the law requires reassessment, and an IEP team meeting to consider whether a pupil continues to need special education and related services. (Ed. Code, § 56381, subd. (b)(2)(C).) During her testimony, Parent acknowledged assessments were completed prior to the January 21, and February 13, 2025 IEP team meetings. The Alhambra IEP team members determined Student was no longer eligible for special education and related services during the February 13, 2025 IEP team meeting.

NO PROOF STUDENT CONTINUED TO QUALIFY FOR SPECIAL EDUCATION

A student qualifies as an individual with exceptional needs, and is, therefore, eligible for special education and related services, if an IEP team determines that legally compliant assessments demonstrate the child has a disability, and the disability results in a need for special education and related services that cannot be provided with modification of the regular school program. (Ed. Code §§56026, 56320; Cal. Code Regs., tit. 5, § 3030, subd. (a).)

Student asserts she continues to have needs qualifying her for special education and related services in the areas of writing, math, and communication. Alhambra contends Student failed to prove she had qualifying special education needs at the time it proposed to exit her from special education at the conclusion of the February 13, 2025 IEP team meeting.

According to Richardson, during the January 21 and February 13, 2025 IEP team meetings, Student's special education team considered continuing qualification under the category of autism, and potential qualification under the categories of intellectual disability, specific learning disability, and speech language impairment. Student offered no evidence refuting that these categories were considered.

Student submitted Bostani's January 2025 Academic Assessment, as proof Student still required special education and related services. However, Student chose not to call Bostani to testify at the hearing, despite being given multiple opportunities to do so, as previously discussed. Alhambra objected to Bostani's reported opinion being considered if Alhambra had no opportunity to cross-examine Bostani regarding the conclusions of the report. Without her testimony, Bostani's report is uncorroborated hearsay, and cannot be the basis of a finding of fact in a special education due process hearing. (Cal. Code Regs., tit. 5, § 3082 subd. (b).)

Bostani's uncorroborated report was given no weight.

NO EVIDENCE OF ELIGIBILITY UNDER ANY IDEA CATEGORY

To be eligible for special education, a student must have a qualifying disability and, because of that disability, need special education. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1) & (b); Ed. Code, § 56026, subs. (a) & (b).) A child with a disability means a child evaluated in accordance with sections 300.304 through 300.311 of title 34 of the Code of Federal Regulations as having autism, a speech or language impairment, an intellectual disability, a specific learning disability, a hearing impairment, a visual

impairment, a serious emotional disturbance, an orthopedic impairment, traumatic brain injury, other health impairment, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. (34 C.F.R. § 300.8(a)(1); see also Cal. Code Regs. tit 5, § 3030.)

Student failed to offer any reliable or persuasive evidence of eligibility for special education in any of the 13 categories available. No expert witnesses were called to establish Student's educational needs associated with any diagnosis in any of the 13 categories of special education eligibility. (Cal. Code Regs., tit. 5, § 3082 subd. (b).) Parent and Student testified Student was diagnosed with autism, but offered no persuasive evidence of educational need associated with Student's autism. Parent and Student also testified to communication difficulties. However, Student also did not prove she qualified for special education due to speech and language impairment.

AUTISM

Eligibility under the category of autism requires proof of a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

Student testified to having some difficulties in school. However, her testimony did not establish that her autism diagnosis adversely affected her educational performance. For instance, Student described sometimes having difficulty tracing the steps in math

problems to identify the source of an error. She said she sought assistance from her teacher when that occurred. Student also described being able to improve her math scores by correcting her assignments and resubmitting them to the teacher. In doing this, Student was accessing a means of improving her math available to all general education Students. Student offered no persuasive evidence that she was unable to perform the mathematical functions expected of a ninth-grade student.

Student also described taking, what she felt, was a long time to devise an introductory sentence, or “hook,” for her writing. She stated it could take “hours or days” to complete a writing assignment. However, Student offered no evidence of the types of writing assignments she was describing. She did not establish that “hours or days” was an unreasonable amount of time to work on a writing assignment, or that such an amount of time was uncommon for ninth grade students. Nor was evidence of any kind offered to establish whether Student’s writing speed indicated a special education need. Student did, however, acknowledge methods of working through those hurdles, using various organizational methods she had been taught previously, or by consulting with teachers.

During hearing, Parent expressed concern that some of the work samples Student offered as Exhibits were “messy” which she thought indicated Student had a continuing special education need. However, Student identified some of the papers Parent considered messy, as drafts, or planning documents, listing, then rejecting, ideas. Some documents showed revisions and corrections Student worked on with special education teacher Villasenor. Some documents were photocopied in a way that showed marks from both sides of the paper, making the work look messier than it otherwise would. Student failed to establish the work samples demonstrated writing deficits requiring special education due to autism.

Student also described some hesitance in her ability to approach peers or maintain a conversation for an extended period of time. However, Student offered no evidence that her autism significantly affected her verbal and nonverbal communication and social interactions. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Nor did Student offer evidence that these communication deficits impeded her educational performance or her ability to access her education. To the contrary, Student described working with her special education teacher, during pull-out instruction, to research and refine multiple drafts of writing assignments. Student was also able to testify for over two hours during the hearing, fielding questions, occasionally asking for clarification, and answering thoughtfully.

The characterizations, in Student's closing argument, describing Student's testimony as to peer communication deficits were overstated. Student did not testify "she did not know what to, how to, or when to say suitable topics with her peers to maintain the friendships." Student testified to difficulties communicating with peers. Student described herself as good at starting conversations but having difficulty sustaining them. She described sometimes experiencing awkward silences. She particularly noted having a "hard time" when her friends were talking about something with which Student was unfamiliar. However, Student testified to having friends. Furthermore, she offered no expert testimony, or other evidence that the difficulties she described demonstrated communication deficits that required special education.

Student did not call any educators, school psychologists, speech pathologists, or Student's independent evaluator to testify that Student required special education as a result of her autism diagnosis. Nor did Student offer any other persuasive evidence that her diagnosis of autism adversely affected her educational performance or her ability to

access her education. Simply having an autism diagnosis is not enough to qualify for special education. (34 C.F.R. § 300.8(a)(1).) A student must also show that the autism adversely affects her educational performance. (34 C.F.R. § 300.8(c)(1)(i); Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

As a result, and considering all of the evidence presented at hearing, Student did not prove she continued to be eligible for special education under the category of autism after February 13, 2025.

SPEECH AND LANGUAGE IMPAIRMENT

As previously discussed, Student alleged deficits in speech and language capabilities. However, she did not prove a speech and language impairment qualifying her for special education.

A pupil has a language or speech disorder, as defined in Education Code section 56333, if it is determined that the pupil has an articulation disorder that interferes with the student's speech intelligibility. (Cal. Code Regs., tit. 5, § 3030, subd. (11)(A).) Speech language impairment eligibility can also be demonstrated by a student's abnormal voice, that is, a persistent, defective voice quality, a speech fluency disorder, or an expressive or receptive language disorder, as demonstrated by standardized testing. Each of these must also adversely affect a child's educational performance. (34 C.F.R. § 300.8(b)(11).)

Student offered no proof that she had a speech language impairment that met the special education eligibility criteria of either state or federal law. (34 C.F.R. § 300.8(b)(11); Ed. Code § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (11) (B), (C), and

(D.) No expert testified that standardized testing results established a speech language impairment, or that a speech language impairment had an adverse effect on Student's educational performance. No other evidence was offered during the hearing that a speech language impairment impacted Student's educational performance or impeded her ability to access her education.

OTHER SPECIAL EDUCATION ELIGIBILITY CATEGORIES

Richardson testified the Alhambra IEP team considered autism, speech and language impairment, intellectual disability, and specific learning disability when making its determination that Student no longer qualified for special education. Alhambra did not offer evidence of the basis of its determination Student was not eligible for special education. However, here Student had the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Alhambra had no obligation to prove Student was not eligible for special education and related services.

Student did not offer any persuasive evidence of special education eligibility under autism or speech and language impairment. Student offered no evidence of special education eligibility under the categories of

- intellectual disability,
- a specific learning disability,
- a hearing impairment,
- a visual impairment,

- a serious emotional disturbance,
- an orthopedic impairment,
- traumatic brain injury,
- other health impairment,
- deaf-blindness, or
- multiple disabilities.

Student failed to prove she was eligible for special education under any category at the time of the January 21 and February 13, 2025 IEP team meetings.

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:

Student did not prove Alhambra denied Student a FAPE during the 2023-2024 school year beginning October 27, 2023, by materially failing to implement the April 12, 2022 IEP services of specialized academic instruction.

Alhambra prevailed on Issue 1.

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ISSUE 2:

Student did not prove Alhambra denied Student a FAPE during the 2024-2025 school year by materially failing to implement the April 12, 2022 IEP services of specialized academic instruction and counseling.

Alhambra prevailed on Issue 2.

ISSUE 3:

Student did not prove Alhambra denied Student a FAPE by failing to consider Student's independent educational evaluation when deciding whether to exit Student from special education.

Alhambra prevailed on Issue 3.

ISSUE 4:

Student did not prove Alhambra denied Student a FAPE at the IEP team meetings held on January 21 and February 13, 2025, by finding Student ineligible for special education and related services.

Alhambra prevailed on Issue 4.

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ISSUE 5:

Student did not prove Alhambra denied Student a FAPE during the 2025-2026 school year through the date the amended complaint was filed, November 18, 2025, by materially failing to implement the April 12, 2022 IEP services of specialized academic instruction, and speech and language.

Alhambra prevailed on Issue 5.

ORDER

Student's requested relief 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.

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings