

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:  
PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2014020930

v.

PASO ROBLES JOINT UNIFIED  
SCHOOL DISTRICT.

**DECISION**

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on February 25, 2014, naming Paso Robles Joint Unified School District.

Administrative Law Judge Rebecca Freie heard this matter in Atascadero, California on April 22 through 23, 2014, and telephonically on May 5, 2014.

Student was represented by an educational advocate, Brad Bailey. Mother attended all of the hearing. Father attended the hearing on April 22 and 23, 2014.

Diane Beall, Attorney at Law, represented Paso. Marcia Murphy, Special Education Director, attended the hearing as Paso's representative on April 23, 2014, and May 5, 2014.

A continuance was granted to allow the parties to file written closing arguments and the record remained open until May 12, 2014. Paso and Student filed written closing arguments on May 12, 2014. The record was closed on May 12, 2014, and the matter was submitted for decision.

## ISSUE<sup>1</sup>

Did Paso fail to offer Student a free appropriate public education in its 2013-2014 school year individualized education program because it did not offer Student occupational therapy services during the 2014 extended school year?<sup>2</sup>

## SUMMARY OF DECISION

This Decision finds that Student does not require direct occupational therapy during the 2014 ESY to receive a FAPE. Student failed to meet his burden of proof by a preponderance of the evidence that he will not benefit from ESY if he does not receive direct occupational therapy for sensory processing issues during ESY. Student also did not establish that he requires direct occupational therapy during ESY so that he will not regress in areas addressed by his occupational therapy during the school year, such as fine motor skills and sensory processing, and then be unable to recoup those skills during the following school year.

## FACTUAL FINDINGS

### *Jurisdiction and Background*

1. Student is seven years of age and resides within the geographic boundaries of Paso with Mother. Student currently qualifies for special education services due to autistic-like behaviors with a secondary eligibility category of speech and language impairment. He has a history of needs in the areas of academics, communication, fine motor skills, and behavior. Behavior issues include a history of elopement during the 2013 ESY, as well as physical aggression towards others. However, these behaviors were not seen during the 2013-2014 school year.

2. Student is now in the first grade. He attended kindergarten in Paso for the 2011-2012 school year, and repeated kindergarten the following year. Student is assisted in the classroom by a one-to-one aide, who ensures that his behavior plan is implemented and updated when needed, keeps him on-task, and creates materials and visual supports for him when necessary. The aide also assists with instruction, collects data, and facilitates social interaction between Student and others. Student's aide and teacher provide him with

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<sup>1</sup> The issue has been rephrased for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

<sup>2</sup> The provision of ESY services to Student, other than occupational therapy, is not at issue in his case.

prompts, fidgets and other objects and strategies such as breaks to address attention issues, which Mother believes are due to sensory processing deficits.<sup>3</sup>

3. An IEP team meeting was held on September 24, 2013, at which time the team worked to develop an IEP for the 2013-2014 school year. The IEP team met again on November 19, 2013, January 14, 2014, and February 6, 2014. During these meetings the, IEP team discussed goals, special education and related services for the 2013-2014 school year, as well as ESY services for the 2014 summer. Mother finally signed consent to the entire IEP on February 11, 2014, disagreeing only with Paso's position that Student did not require occupational therapy services during the 2014 ESY.

4. The primary basis for determining that Student did not require occupational therapy services during the 2014 ESY was the opinion of his current occupational therapist, Kristen Wendorff. Ms. Wendorff was unable to attend the February 6, 2014 IEP team meeting. However, she attended the three previous meetings, and Student's need for occupational therapy in ESY was discussed at the January 14, 2014 meeting. Ms. Wendorff also discussed Student's occupational therapy needs during ESY with the principal of Student's school before the February 6, 2014 meeting, and the principal conveyed that position to the rest of the team at that meeting.<sup>4</sup> However, the IEP also called for the IEP team to revisit the issue of occupational therapy during ESY at another IEP team meeting before the end of the 2013-2014 school year. As a result of the determination by Paso that he did not require occupational therapy during 2014 ESY, Student filed the underlying complaint in this case.

#### *Past History of Occupational Therapy Services*

##### 2011-2012 SCHOOL YEAR

5. During the 2011-2012 school year, Student received 60 minutes each week of direct occupational therapy services from occupational therapist Mary Ann Hull. By June of 2012, Student had met his occupational therapy goal established in an October 2011 IEP. In May, 2012, the IEP team agreed that Student would receive 30 minutes each week of direct occupational therapy services during the 2012 ESY. However, for reasons unexplained at hearing, Student did not receive these services during that ESY.

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<sup>3</sup> Fidgets are small toys or puzzles, such as soft textured spheres for example, that a child can manipulate and handle as a means of relieving tension, or to assist with focus. Sensory processing is how one responds to sensory stimulation in the areas of hearing, touch, taste, smell, and sight. Some students with autism have atypical responses to sensory stimulation.

<sup>4</sup> Ms. Wendorff's absence from the February meeting was not raised as an issue in either the complaint, or Student's closing argument.

## 2012-2013 SCHOOL YEAR

6. At an IEP team meeting on August 29, 2012, Ms. Hull told the IEP team that she believed Student had regressed in this area, although detailed information as to how he had regressed was not provided during the hearing.<sup>5</sup> Student received additional direct occupational therapy services for the next several months to make up the time missed during 2012 ESY.

7. Ms. Hull conducted a formal occupational therapy assessment in the fall of 2012, on behalf of Paso. She provided Student with his occupational therapy services for both the 2011-2012 and 2012-2013 school years. According to the assessment report, which was completed in early November 2012, Student's fine motor skills in the classroom were in the average range, as was his sensory processing, for the most part. Some problems were noted in the areas of social praxis and touch. Student demonstrated strengths in gross motor skills, so this was not an area of concern to Paso members of the IEP team. Therefore, it appears Student had already recouped the skills Ms. Hull believed he had lost when the IEP team met in August. She believed Student's needs in the area of occupational therapy could now be met by providing consultation services to classroom staff.

8. Parents disagreed with the fine and gross motor levels in the assessment report and also expressed concern about Student's sensory processing, believing that Student's sensitivity to touch, lights, and loud noises caused him to be distracted in class. Although this might have been an issue at home, it was not observed in the school setting. Parents asked for direct occupational therapy services, and the IEP team created a fine motor goal in handwriting and agreed to the provision of direct occupational therapy services, with one 30 minute pull out session each week, and one 30 minute push in session each week for the 2012-2013 school year. These occupational therapy services focused on fine motor skills, and at times sensory processing issues were also worked on, although Ms. Hull did not believe the latter was an area of concern that required direct occupational therapy services.

9. The 2012-2013 IEP called for Student to participate in ESY. The focus of ESY for the summer of 2013 was social skills, as well as an academic program to help Student maintain skills in English language arts, and math. Student received no occupational therapy for the 2013 ESY program as his IEP did not provide for it. There was no evidence that Parents requested that Student receive occupational therapy services in the 2013 ESY program. The evidence did not establish that Student regressed in the areas addressed by his occupational therapy following the 2013 ESY program, nor that he did not receive educational benefit from ESY in 2013.

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<sup>5</sup> Ms. Hull is no longer employed by Paso and did not testify at the hearing. Therefore, details concerning her expertise are not available.

*Student's Progress in Occupational Therapy during the 2013-2014 School Year*

10. Ms. Wendorff provides Student with direct occupational therapy services for this school year in the area of fine motor skills, as well as consultation services in the area of sensory processing for staff who work with him. Ms. Wendorff received her bachelor's and master's degrees in occupational therapy, and was licensed in Florida in 1996. Much of her work experience there was in skilled nursing facilities, rehabilitation facilities, and hospitals, working with patients who had suffered from illness or injury. In 1998 she moved to California and was licensed here. From 1999-2011, she was a stay-at-home mother, and did not work as an occupational therapist. However, in 2011 she took online the courses necessary to regain her California license and obtained it in 2011. In October 2011, Ms. Wendorff was employed by the Paso as a school-based occupational therapist in the Paso Robles area and she continues in this employment.<sup>6</sup>

11. At IEP team meetings in the 2013-2014 school year, and during the hearing, Mother expressed concerns about Student's handwriting due to his fine motor deficits. Student's evidence included mostly undated samples of his handwriting on work sheets. One sample was dated December 2013, and the rest appeared to have been completed before December 2013. However, the testimony of Ms. Wendorff and Student's current teacher, Adalene Blythe,<sup>7</sup> as well as dated work samples from December 2013 to April 2014, presented by Paso, support a finding that Student's handwriting and other fine-motor skills are presently at or above age/grade level compared to typically developing peers of the same age/grade level. Student also demonstrates an excellent ability to cut out shapes, and colors quite well.

12. Mother also expressed, at IEP team meetings and during the hearing, concerns about Student "wetting" himself during school. She believes this occurs because Student has difficulty manipulating zippers and buttons, and therefore cannot open his pants to use the toilet. Mother believes wetting himself causes Student to develop rashes, which cause

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<sup>6</sup> In his closing argument, Student claims that Ms. Wendorff "lacked credible expertise" and asked that her testimony be disregarded. He claims this is because some of her experience was in the medical setting, she had a 12 year break from providing occupational therapy, and then obtained the necessary education to obtain her California license in 2011 by taking online courses. However, Ms. Wendorff has had a clear license in occupational therapy from the State of California since 2011, has no disciplinary history, and has worked with children in the school setting since then. Her education, and work experience, as well as her demeanor, appearance and testimony as a witness, showed her to have expertise in the area of occupational therapy with school aged children, as well as detailed information concerning Student and his progress and needs in this area.

<sup>7</sup> Ms. Blythe has been a general education teacher for 26 years, and has taught in Paso for 20 years. She received a teaching credential in Tennessee in 1975 and her California credential in 1983. It is a clear multi-subject credential. The majority of Ms. Blythe's teaching has been in kindergarten and first grade classrooms.

itching and leads to him being seriously distracted in the classroom, due to his purported sensory processing issues.

13. Other than Mother's statements, there was no evidence that Student has toileting issues at school. Ms. Wendorff and Ms. Blythe were thoughtful, open and direct when they testified, and neither had ever witnessed Student wetting himself during the school year. There are other students in Ms. Blythe's first grade class who have wet themselves on occasion. Although Ms. Wendorff has worked with Student this school year to train him to better manipulate buttons and zippers, he usually wears sports pants to school with an elastic waist and no zippers, buttons or ties, which can be easily pulled up and down. Therefore, Student has little opportunity to practice with buttons and zippers other than with the manipulatives used by Ms. Wendorff in occupational therapy. Student is somewhat less proficient than typically developing peers in this area, although it is not an area of concern.

14. Student is somewhat inattentive in the classroom at times. Mother believes this is related to sensory processing issues and sensory dysregulation, partly due to "wet" pants, and also due to his purported aversion at home to bright lights and loud noises. Mother's testimony was not credible, based on the testimony of Ms. Wendorff and Ms. Blythe, as well as a letter to Mother from Ms. Hull in January 2013.<sup>8</sup> Based on the evidence, Student's inattentiveness tends to occur when he is instructed in subjects that are less-preferred. To address Student's inattentiveness, both Ms. Blyth and Student's aide prompt him when they notice he is off-task, and sometimes Ms. Blythe will have the whole class take a "sensory" break, such as stretching, before resuming the lesson. On occasion, Student will take an independent sensory break. However, Student's attention level is not noticeably different from that of the other first grade students in the class, and some children in the class require much more prompting from Ms. Blythe to address inattentiveness.

15. To the extent that Student has sensory issues which cause him to be inattentive during class, Ms. Wendorff has provided the classroom with fidgets and other materials that can be used to address this when necessary. He is also allowed to take short breaks. Ms. Wendorff also consults with Student's teacher and aide on a monthly basis, and plans to consult with the 2014 ESY staff before the program starts this coming summer. She will also provide both that classroom, as well as Mother, with specific materials and manipulatives that Student can work with during the summer to maintain his fine motor skills. Ms. Wendorff will ensure that the ESY classroom has appropriate manipulatives and other strategies that Student can use when he needs a sensory break. These services are sufficient to meet Student's occupational therapy needs during the 20-day ESY to prevent regression, and to permit him to access the rest of the ESY curriculum.

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<sup>8</sup> In that letter, Ms. Hull explained to Mother that pulling Student out of class for direct occupational therapy was causing him to miss instruction, and that was why Student was falling behind in school, not because he had sensory processing issues as Mother believed.

### *Need for Occupational Therapy during 2014 ESY*

16. During extended breaks, many children on the autism spectrum have difficulty retaining what they have learned, and recouping what they have lost following those breaks. They may also have sensory processing issues which can result in a lack of focus and inattentiveness in the classroom.

17. During both the 2012-2013 and 2013-2014 school years, the IEP teams determined that Student required ESY to address socializations issues, as well as academic issues because they believed that he would regress and have difficulty recouping these skills without services in these areas during ESY of 2012 and 2013.<sup>9</sup> There was no evidence presented that Student did not benefit from the ESY he received in 2012 and 2013, despite the fact that he did not receive occupational therapy during either session.

18. In addition to Mother's testimony regarding his occupational therapy needs, Student presented two expert witnesses. The first, Dr. Joan Surfus, is an occupational therapist in private practice who also has experience working with children in schools. She presented a report based on an early April 2014 assessment of Student recommending 30 minutes per week of direct occupational therapy services for at least the next six months. However, her assessment was based on a medical model, not an educational model. Dr. Surfus's occupational therapy testing showed Student in the average range in all but one subtest, and she obtained most of her information concerning Student and his behaviors from Mother. Dr. Surfus never observed Student in school, nor did she talk to any school staff. She admitted when she testified that she did not have sufficient information to provide an opinion that Student required occupational therapy for the 2014 ESY program.

19. Dr. Laurie Ferguson, a clinical psychologist, also testified on behalf of Student, basing her opinions on testing she conducted in April 2014, as well as information she received from Mother. Like Dr. Surfus, Dr. Ferguson did not talk to any Paso personnel, nor observe Student in the school setting. Dr. Ferguson opined that Student required occupational therapy during 2014 ESY because the handwriting samples Mother showed her indicated fine motor deficits, and in her testing of Student she determined that Student had sensory processing issues that needed to be dealt with through continuing direct occupational therapy. However, she did not provide any information as to what that therapy would consist of. Further, Dr. Ferguson also diagnosed Student as having attention deficit hyperactivity disorder, which could be the real reason for his history of inattentiveness in the classroom, although she testified it was due to his sensory processing issues. Dr. Ferguson's opinion was not credible because she is not an occupational therapist and not qualified to give an opinion as to sensory processing. Further, she obtained much of her information concerning Student's occupational therapy needs from Mother, who tends to exaggerate Student's deficits in this area, and Dr. Ferguson had no information from observing Student in school or talking to Paso staff.

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<sup>9</sup> There was no evidence as to whether Student received ESY during the summer of 2011.

20. Student also provided written statements/reports from a behaviorist, neurologist and pediatrician which all stated, generally, that as a child on the autism spectrum, Student requires ESY. However, none of these documents specifically addresses a need for occupational therapy in ESY.

## LEGAL CONCLUSIONS

### *Introduction – Legal Framework under the IDEA<sup>10</sup>*

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; <sup>11</sup> Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that 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 (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child’s IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services, such as speech and language therapy, mental health services, and occupational therapy, which are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services.].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures, with the participation of parents and school personnel, that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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<sup>10</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>11</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950.) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided or offered a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords local educational agencies and parents the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 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).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this Decision, Student has the burden of persuasion since he filed the case.

*Issue: Does Student Require Direct Occupational Therapy During the 2014 ESY?*

#### OFFER OF A FAPE

5. 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 District* (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.*) For a school district’s offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district’s offer of educational services and/or placement must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the pupil with some educational benefit. (*Ibid.*)

6. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. An IEP is “a snapshot, not a retrospective.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

## ESY

7. ESY services means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP. (34 C.F.R. § 300.106 (b).) Extended year is the period of time between the close of one academic year and the beginning of the succeeding academic year. (Cal. Code Regs., tit. 5, § 3043, subd. (c).)

8. The IEP determines on an individual basis whether ESY services are necessary for the provision of FAPE. (34 C.F.R. § 300.106 (a)(2).) ESY services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (Cal. Code Regs., tit. 5, § 3043.)

9. An ESY program shall be provided for a minimum of 20 instructional days, including holidays. (Cal. Code Regs., tit. 5, § 3043, subd.(d).) Under federal regulations, a public agency may not unilaterally limit the type, amount, or duration of ESY services. (34 C.F.R. § 300.106 (a)(3)(ii).) The services a child receives during ESY must be comparable to those he receives during the regular school year. (Cal. Code Regs., tit. 5, § 3043, subd. (g)(2).)

## ANALYSIS

10. Student argues that he requires direct occupational therapy during ESY to address toileting lapses at school that cause him to be inattentive, due to his difficulties in the area sensory processing and sensory regulation. Student also claims he needs direct occupational therapy sessions to address handwriting difficulties. Without these services, Student will regress and be unable to recoup the lost skills.<sup>12</sup> Paso contends that Student does not require occupational therapy during ESY for any reason. It claims that Student

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<sup>12</sup> Student argues that Paso has the responsibility to provide evidence at the hearing to support its contention that Student did not show signs of regression and an inability to recoup information due to a lack of occupational therapy in previous ESY programs. However, Student filed this case and therefore bears the burden of proof.

failed to produce evidence during the hearing to support a finding that he will regress in this area, and not be able to recoup skills.

11. Student is a child on the autism spectrum, and many of these children do have problems retaining what they have learned in previous months during extended breaks, and then recouping that information. Because the IEP team, including Paso members, believe that Student might regress in certain areas during the summer break, ESY was offered for summer 2014, with focus on social skills, handwriting, English language arts and math.

12. Occupational therapy is a related service. It is to be provided if a student needs it to benefit from special education.

13. Other than Mother's statements at IEP team meetings and testimony during the hearing, there was no other evidence that Student has toileting issues at school that require occupational therapy to remediate them. Although Student may have difficulty with manipulating buttons and zippers, he is given little opportunity to practice these skills since the pants or shorts he typically wears to school do not have buttons or zippers. Ms. Wendorff provided persuasive, credible testimony that Student does not show signs of sensory dysregulation in the school setting. This was corroborated by Ms. Blythe, who found him to be working at grade-level in all areas, and no more inattentive than many other children in her class, which contradicts Student's contention that sensory dysregulation is an issue for him.

14. Although Mother believes Student has poor handwriting, this testimony was discredited at hearing by both Ms. Blythe and Ms. Wendorff, as well as numerous work samples presented by Paso. Further, handwriting is one of the areas to be addressed in ESY, and there was no evidence presented that Student requires direct occupational therapy to benefit from this instruction in ESY as the needs can be met with classroom staff.

15. There was no evidence that Student did not benefit from ESY during the summers of 2012 and 2013, when he did not receive occupational therapy services. Although there was evidence that Student did demonstrate some regression in at least one area addressed by direct occupational therapy services following the summer of 2012, by the time he was formally assessed in the fall of 2012 for his triennial IEP, he was in the average range in both fine and gross motor skills.<sup>13</sup> In addition, during the 2013-2014 school year, Student has not demonstrated sensory dysregulation that cannot be dealt with through interventions offered by his aide or the teacher in the classroom, and monthly consultation with the occupational therapist.

16. Student had occupational therapy in the past to address fine motor deficits, which impacted his handwriting. However, his handwriting now is at grade/age level. Additionally, handwriting is one of the areas to be addressed during the 2014 extended school year program. Therefore, Student did not establish by a preponderance of the

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<sup>13</sup> There was no evidence about which area Student showed regression.

evidence that he requires direct occupational therapy services because his handwriting is poor.

17. The evidence did not establish that Student will regress in the areas currently addressed by direct occupational therapy sessions if he does not continue with these sessions during ESY. Further, Student failed to establish that he requires occupational therapy to benefit from the other areas addressed in his ESY program. Accordingly, Student does not prevail in this matter.

#### ORDER

Student's request for direct occupational therapy services during the 2014 ESY is denied.

#### PREVAILING PARTY

Pursuant to 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. Here, Paso was the prevailing party on the only issue presented.

#### RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: May 29, 2014

\_\_\_\_\_/s/  
REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings