BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: LOWELL JOINT SCHOOL DISTRICT, Petitioner, v. STUDENT, Respondent.	OAH NO. 2005121007
LOWELL JOINT SCHOOL DISTRICT, Petitioner, v. STUDENT, Respondent.	OAH NO. 2006030513

DECISION

This matter came before Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, for a due process hearing in Whittier on May 24, 2006.

Petitioner Lowell Joint School District (district) was represented by Jack B. Clarke, Jr., Attorney at Law, and Linda Riley, a consultant from the North Orange County Special Education Local Plan Area (SELPA). Respondent Student (student) was not represented at the hearing by either his parents or other representative.

On December 28, 2005, the school district through its counsel filed a due process complaint seeking a determination about the individualized education program developed

for the student for the 2004-2005 school year. The Office of Administrative Hearings (OAH) set this first due process request (Case No. N2005121007) for hearing for January 27, 2006. The hearing was continued at the request of the parent to allow the parties to attempt to resolve the matter through mediation. Following a telephonic trial setting conference on February 10, 2006, the first due process request was set for a continued hearing on March 21-24. A prehearing conference was held on March 10, 2006, during which the student's father stated that he was refusing the services of the school district for his son and did not want to be present for the upcoming due process hearing. The parties agreed to meet and confer about a stipulation to obviate the need for a hearing.

On March 13, 2006, the district through its counsel filed a second due process complaint seeking a determination regarding the annual individualized education program developed for the student in February 2006. OAH set this second due process request (Case No. 2006030513) for hearing on April 13.

On March 16, 2006, the district filed a motion to consolidate the two due process complaint matters for hearing. When the district did not receive a ruling on its consolidation motion, it filed a motion for continuance on March 20, 2006, requesting that the March 21 hearing on the first due process request be continued and heard together with the second matter on April 13 or soon thereafter. On March 29, 2005, the motion to consolidate was granted, as was the motion to continue the hearing on the first due process request and a telephonic trial setting ordered to be held on April 13.

On April 7, 2006, the district filed a motion to continue the April 13 hearing even though that hearing date had already been continued to a date uncertain. The district indicated that the parties needed additional time to submit a stipulation, witnesses were unavailable for the April 13 hearing date due to spring break, and the student's parents were planning to be on vacation. At the telephonic trial setting conference on April 13, 2006, the consolidated hearing in these two matters was scheduled for May 24, 2006.

At the commencement of the consolidated hearing on May 24, 2006, the district announced that it was ready to proceed and the student's parents were not present. The

Administrative Law Judge then called and spoke to both parents separately on the telephone in the presence of the district's attorney and representative. The parents separately stated that they had notice of the due process hearing scheduled for that day, acknowledged their right to be present and to present evidence at the hearing, and indicated their decision not to attend the due process hearing. The Administrative Law Judge advised the parents that, if they did not appear at the hearing, they would be deemed to have waived their due process hearing rights, including their right to present evidence and confront witnesses.

Thereafter, the consolidated due process hearing proceeded without the parents. The district presented its exhibits (Exhs. 1-44), which were received in evidence, and the brief testimony of several witnesses who had appeared for the hearing. The hearing was continued and record held open for the district to submit proposed factual findings and order as well supporting declarations of witnesses in lieu of further testimony.

On June 9, 2006, the district timely filed a Proposed Statement of Facts and Conclusions of Law and the Declarations of Dr. Marcia Schoger, Linda Riley, Wendy Meyers, Ronita Van Vliet, and Christina McReynolds, which were collectively marked and received in evidence as Exhibit 45. In addition, the Administrative Law Judge marked and received as Exhibit 46 a letter by parent's former counsel dated April 4, 2005, that was presented at the hearing. The record was closed on June 9, 2006, and the matter submitted for decision.

ISSUE

The sole issue presented for decision is whether the individualized educational program developed by the school district for the student for the 2004-2005 and 2005-2006 school years constituted the provision of a free appropriate public education.

FACTUAL FINDINGS

1. Petitioner Lowell Joint School District (district) is a public school district organized and existing under the laws of the State of California and a local education agency within the meaning of Title 20, United States Code, section 1401(19)(A).

2. Student is a four-year old child born on December 5, 2001. He lives with his father and mother in La Habra which is within the jurisdictional boundaries of the school district. Due to developmental delays, he received early intervention services from the Regional Center of Orange County (regional center) beginning when he was about two years old. Later, based on impairments in attention and language, student was diagnosed with autistic or similar behavioral communication disorder consistent with autism spectrum disorder. In September 2004, student was transitioned by the regional center's individualized family service plan to receiving services from the school district. He qualifies for special education services under the primary disability category of autism.

INITIAL IEP

3. (A) On December 1 and 3, 2004, the school district convened an initial individualized education program (IEP) meeting for the student. Participants included the school psychologist, general and special education teachers, speech and language specialist, occupational therapist, school nurse, SELPA autism specialist, special day class teacher, student's private speech pathologist, and the parents. Prior to the meeting, the parents indicated in a letter that they had "high hopes" for the meeting and looked "forward to reviewing the assessments."

(B) Prior to this first IEP meeting, the SELPA conducted an initial adapted physical education (PE) assessment, the school nurse performed a physical assessment of the student, a physician conducted a health report, and the school psychologist and speech and language specialist conducted a multidisciplinary assessment. In addition, occupational and physical therapy evaluations were performed and a transition evaluation and report had been earlier prepared by the student's early intervention therapy provider. The

evaluations and reports were presented to the IEP team. The parents expressed no disagreement with the assessments.

(C) On December 1, 2004, the IEP team discussed and reviewed the evaluations and reports of student's skills, present levels of performance, and individual needs. Participants presented oral reports in their specialty areas. In general, the student's cognitive ability was found to be at approximately the 25 to 26 month old level. The student had started to verbalize but had delays in functional communication, gross motor skills at below the expectancy level, and a few tantrums. The parents provided medical information and indicated their priorities for instruction of their son. Based on reports of specialists, the IEP team determined the student was eligible for special education services as a child with autistic-like behaviors including impairments in communication, social interaction, and motor delays.

4. (A) The initial IEP meeting continued on December 3, 2004. The parents presented their own curriculum for the IEP team to consider as well as letters from health professionals with recommendations for a home program that included 40 hours a week of an applied behavioral analysis (ABA) program. The parents also presented a letter from their son's physician who wrote that the student was being treated for immune and gastrointestinal disorders that required a strict diet and recommended a one-on-one ABA program in the home for him.

(B) During the meeting, the occupational therapy (OT) specialist discussed the student's needs and presented her recommendations. The adaptive PE specialist discussed the student's present levels of performance and goals for areas of delay. The school psychologist, special education teacher, and speech and language specialist reviewed the student's present levels of performance, needs, and goals in the pre-academic, social, and speech and language areas. Goals were developed in such specific areas of need as balance and object control, fine motor and self-care skills, cognitive functioning, communication skills, and expressive language. In addition, the SELPA autism specialist discussed how the student's goals could be implemented in a discrete trial training program, reviewed how

services would be tailored to the individual needs of the student, and recommended an additional 90 minutes of individual programming for the student.

(C) Furthermore, the IEP team discussed a proposed schedule of instruction for the student, including time for nutrition. The district's director for special education recommended that the student have a one-to-one special education support aide for the first three months to facilitate his transition to the school program.

5. On December 3, 2004, the district offered the following educational program and related services to the student: (a) 15 hours per week in the Daily Pre-Kindergarten Moderate Learning Center Program at the Meadow Green Elementary School; (b) 100 minutes per week of occupational therapy in two weekly sessions at the Gallagher Pediatric Therapy Services clinic; (c) 30 minutes per week of adaptive PE; (d) two and one-half hours per week of speech and language therapy with three 30-minute one-to-one sessions per week; (e) seven and one-half hours of intensive behavioral instruction with consultation and supervision services by the SELPA autism specialist; and (f) transportation to and from school. The parents agreed with the goals developed for their son but requested additional time to review the proposed individualized educational program and document. The IEP team agreed to continue the meeting until December 16 in an effort to have a consensus on the student's IEP. The district sent the parents a summary of the educational program and a proposed class schedule developed for the student at the initial IEP meeting.

6. (A) On December 16, 2004, the IEP team re-convened to hear the parents' decision. The parents indicated that, except for the proposed OT services, they disagreed with the IEP. The parents counter-proposed a home program that included 40 hours of an intensive ABA program provided by a nonpublic agency in their home, two hours of speech therapy, two hours of OT, and one hour of physical therapy (PT). The parents indicated that they wanted to observe their son in all therapy sessions and would seek reimbursement from the school district for their costs paid to nonpublic providers. One of the parents' main concerns was that the student would eat something inappropriate and harmful if the floor was not clean and they did not watch him.

(B) The parents stated that the student was not ready developmentally to interact with age appropriate peers. Moreover, the parents stated that their son's medical condition, including dietary requirements, required him to receive services at home where they could observe him at all times. The IEP team requested the parent's permission for the student to be assessed by a physician consultant so that the school district could better understand the nature of his medical condition in relation to his educational needs. The parents consented to school district assessments of the student's psycho-motor development as well as his medical condition by a physician consultant. The district's special education director also advised the parents that personnel at the proposed school site had experience with medically fragile children. The IEP team proposed extended year services for the student. Nevertheless, the parents did not give their consent to this initial IEP.

7. (A) On January 3, 2005, the student's parents submitted a letter to the school district, indicating that they were seeking reimbursement for all independent assessments. The parents further stated that they were providing and paying for an ABA program for their son.

(B) In a letter dated January 6, 2006, the district's special education director advised the parents that adapted PE, physical, health, multidisciplinary, and occupational and physical therapy assessments were conducted prior to the initial IEP meeting. The director indicated that these assessment reports were then presented at the initial IEP meeting and that the parents did not disagree with any of these assessments. The director asked whether the parents were asking for additional independent assessments. The director also indicated that the parents did not have to pay for an ABA program because the school district had offered an individualized educational program to their son at the initial IEP meeting. Subsequently, the school district did not receive a response to this letter from the parents.

8. On February 5, 2005, pursuant to the December 17 request of the district and the SELPA, Janice Carter-Lourensz, M.D., M.P.H., conducted a developmental pediatric review of the student's medical, therapy, and educational records. The physician was not

able to meet with the parents or examine the student. Based on her records review, the physician examined the student's medical and dietary requirements to determine whether he would benefit from receipt of developmental services in his home rather than in the school or classroom setting. As maintained by the parents, the student's medical condition and sensitivity to allergens required constant supervision to ensure that he followed a specialized diet that was gluten free and casein free (GFCF). Dr. Carter-Lourensz concluded that the student would benefit from educational programming provided in the home with close supervision until he could be transitioned to a school that had GFCF environment.

9. Earlier, on January 25, 2005, the school district had scheduled a follow-up IEP meeting for the student for February 7 and invited the parents to the meeting. On February 2, 2005, the parents wrote to the school district that they believed the IEP to be complete and there was no reason to hold another IEP meeting. The director of special education wrote to the parents that an IEP meeting was necessary to discuss the assessments to which the parents had consented. The director advised the parents that the district wanted to develop and provide the most appropriate educational program that would meet their son's needs. The district also called the parents several times to try to convince them to attend the upcoming IEP meeting and kept records of their attempts to contact them.

10. (A) On February 7, 2005, the district convened the follow-up IEP meeting with the following participants: director of special education, preschool teacher, registered nurse, SELPA program specialist and director, school psychologist, speech and language specialist, and physician consultant Dr. Carter-Lourensz. The parents did not attend or participate in this meeting. The purpose of the meeting was to review the developmental pediatric review by Dr. Carter-Lourensz in order to complete or add to the student's initial IEP.

(B) On February 7, 2005, the IEP team reaffirmed that the student was eligible for special education due to autism and that his needs could not be met in the general education program. Dr. Carter-Lourensz presented her findings and recommendations in connection with the student's medical condition, need for a GFCF environment, and strict

dietary requirements. The physician advised the IEP team that the student's sensitivity and allergy to certain foods could cause the student to become irritable and have diarrhea and abdominal cramping which would then affect his multiple processing functions as well as his ability to set priorities, solve problems, and postpone immediate gratification. These allergic reactions thus would adversely impact his learning ability. Dr. Carter-Lourensz recommended that the IEP team take certain measures to reduce the student's exposure to these foods or allergens to facilitate his learning.

(C) In consideration of the student's medical condition and to meet the student's unique needs, the IEP team adopted recommendations of the physician consultant and amended the initial IEP by proposing modifications to the school environment. The IEP team recommended that the district provide an air filter for the classroom, require staff and pupils to remove their shoes before entering the classroom, maintain restroom cleanliness, order GFCF school supplies for the student's classroom, preclude food preparation with gluten and casein, manage food items in the classroom, and provide a one-to-one instructional assistant trained to monitor the student's school environment.

11. Because the parents were not present and did not participate in the February 7, 2005, IEP meeting, the district forwarded copies of the parents' rights or procedural safeguards, the pediatric development review by Dr. Carter-Lourensz, and the amended initial IEP document. The district asked the parents to sign the IEP document so that the district could begin the educational program and services for the student. The district called the parents to ask if they had any questions about the IEP.

12. On February 16, 2005, the parents called the district's special education director to advise that they had received the IEP document and to request that the district not call them any more. By letter, the director asked the parents to call to discuss and finalize the IEP and services thereunder.

13. On March 9, 2005, the parents visited and observed the pre-kindergarten moderate learning center program and classroom at Meadow Green Elementary School,

which was offered placement in the initial IEP. The school district again asked the parents to call to discuss and finalize the IEP. On March 11, 2005, the parents sent a copy of the IEP parent consent page to the school district with the notation, "We disagree with the district's offering as it is inappropriate for our son."

14. Six months later, on September 8, 2005, the school district wrote to the parents that the 2005-2006 school year had begun and asked them to contact the school district to discuss services and to finalize the IEP. The school district sent the parents another copy of the IEP developed in December 2004 and February 2005. The parents did not respond.

15. On December 28, 2005, the school district filed its first due process request (Case No. N2005121007), requesting a hearing to determine whether the school district's initial IEP provided the student with a free appropriate public education and could be implemented without the parents' consent.

FEBRUARY 2006 IEP

16. (A) On February 24, 2006, the school district conducted an annual IEP meeting for the student. The parents attended the meeting and other participants included a special education teacher, SELPA autism specialist, school psychologist, preschool language specialist-special education teacher, school nurse, and adapted PE specialist. The student was a year older at five years of age. The IEP team re-affirmed the student's eligibility for special education based on his diagnosis of autism. For the past year or so, the student had not been a pupil in the school district or utilized services under his initial IEP due to the decision of his parents to provide services to their son themselves in the family home.

(B) On February 24, 2006, the IEP team summarized the process that the school district had followed in developing the initial February 2005 IEP, including assessments, discussion of medical and dietary or food allergy issues, and the incorporation into the IEP of the recommendations of the physician consultant Dr. Carter-Lourensz for creating a GFCF school environment for the student. The school district explained to the parents that

law required the annual IEP and meeting. The IEP team did not review the student's present levels of performance or goals because he had been not been receiving services at school for the past year. The parents related only that the student was one year older and had been receiving services and following a restrictive diet in a home-based program provided and/or funded by them. The parents indicated that they were satisfied with and wanted to keep their son in his current, home program. The parents did not want him to be placed or to receive services in the preschool program offered by the school district. The parents left the IEP team meeting early to take their son to Disneyland as a reward. Before they left, the school district asked for their consent to conduct assessments. Pending the new assessments, the IEP team offered the parents the same preschool program and services, including intensive behavioral instruction and modifications to create GFCF school environment, that was outlined and previously offered to them in the December 2004 and February 2005 initial IEP, as set forth in Findings 5 and 10(C) above. The parents gave their consent for assessments and asked that the assessments be conducted at their home. The parents then left the IEP meeting without signing the IEP document or agreeing to the placement or services offered to their son. The parents told the IEP team the meeting could continue in their absence. Thereafter, the IEP team concluded their meeting and prepared the annual IEP document outlining services offered to the parents for their son.

17. (A) The student was not represented at the due process hearing. The parents were properly served with and received notice of the date, time, and place of the hearing and chose not to make an appearance. As such, no evidence was presented on behalf of the student, including any evidence showing whether the school district's assessments may have been inadequate or inappropriate or that the school district may have failed to assess the student in all areas of suspected disability. No evidence was presented to show whether the school district may have failed to follow procedural requirements or committed any procedural errors.

(B) At the commencement of the hearing, the parents were contacted by telephone and informed the Administrative Law Judge and the school district's counsel and

representative that they were aware of the hearing and were not planning to appear. The parents stated that they were providing education and services to their son in their home and were not interested in the IEP offered by the school district. The parents stated the student is progressing at home and firmly believe that the home program is in his best interests and that the school program is not appropriate for him.

(C) In April 2005, the parents withdrew a prior due process request that they had filed against the school district. In the present proceeding, there are no requests of the parents, such as requests for reimbursement for independent assessments or for their private home program, that are at issue or need to be determined herein.

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Summary of Applicable Law: Under the federal Individuals with Disabilities Education Act (IDEA) and state law, pupils with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §1400 (2005); Ed. Code §56000 et seq.) The term "free appropriate public education" means special education and related services that are available to the pupil at not cost to the parents, meet state educational standards, and conform to the pupil's individualized education program. (20 U.S.C. §1401(9).) This right to FAPE arises only after a pupil has been assessed and determined to be eligible for special education.

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 485 U.S. 176, 200-202, 102 S.Ct. 3034), the United States Supreme Court addressed the level of instruction and services that must be provided to a pupil with disabilities to satisfy the requirements of the IDEA. The *Rowley* Court determined that a pupil's IEP must be reasonably calculated to provide the pupil with some educational benefit but that the IDEA does not require school districts to provide special education pupils with the best education available or to provide instruction or services that maximize a pupil's abilities.

(*Ibid*. at 198 - 200). Finding that Congress included no language suggesting an obligation to maximize the potential of disabled pupils, the *Rowley* Court stated school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the pupil. (*Ibid*. at 201).

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.) 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.*) The school district's proposed educational program must be evaluated in light of information available to the school district and what was objectively reasonable when the program was developed. (*Adams* v. *State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) For a school district's offer of special educational services to a disabled pupil to constitute a free appropriate public education under the IDEA and the *Rowley* case, a school district's offer of educational services and/or placement must have been designed to meet the student's unique needs, comports with the student's IEP, and was reasonably calculated to provide the pupil with some educational benefit.

The United States Supreme Court in the *Rowley* case also recognized the importance of adhering to the procedural requirements and protections afforded by the IDEA, which are designed to ensure effective parental participation in the IEP process and careful consideration of a pupil's educational needs. (See 20 U.S.C. §1400 et seq.) The United States Supreme Court noted in *Rowley* that, "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation" at every step "as it did upon the measurement of the resulting IEP." (*Board of Education of the Hendrick Hudson Central School District* v. Rowley, *supra,* 458 U.S. at 205-206.) For example, one of the rights afforded to parents is the right to be provided a formal written offer of placement by the school district. (*Union School District v. Smith*, 157 F.3d 1519 (9th Cir. 1994); cert. denied 115 S. Ct. 428 (1994).) In the *Union* case, the Circuit Court of Appeals

noted that one of the reasons for requiring a formal written offer is to provide parents with the opportunity to decide whether the offer of placement is appropriate and whether or not to accept the offer. (Ibid.)

Among the due process rights afforded to a pupil with disabilities and his or parent is the right to be present at each individualized education program meeting and to participate in the development of the individualized education program. (20 U.S.C. δδ1414(f), 1415(b)(1); 34 C.F.R. δ300.345; Ed. Code δδ 56341, subd. (b)(1); 56341.5; 56506, subd. (d).) A school district may conduct an IEP meeting without a parent if it is unable to convince the parent to attend but must maintain a record of its attempts to arrange a mutually agreed-upon time and place for the meeting. (34 C.F.R. δ300.345(d); Ed. Code δ56341.5, subd. (h).)

However, not every procedural flaw constitutes a denial of a FAPE. Procedural flaws must result in the loss of educational opportunity to the student, or seriously infringe on the parent's participation in the IEP process, to constitute a denial of a FAPE. (*Board of Education of the Hendrick Hudson Central School District* v. *Rowley*, *supra,* 458 U.S. at 206-07; see also *Amanda J.* v. *Clark County School District*, 267 F.3d 877 (9th Cir. 2001).) However, procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' opportunity to participate in the IEP formulation process are insufficient to support a finding that a pupil has been denied a free appropriate public education. (*W.G.* v. *Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1482.)

In general, a pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code §56303.) All referrals for special education and related services shall initiate the assessment process and shall be documented. (Cal. Code Regs., tit. 5, §3021, subd. (a).) All school staff referrals shall be written and include a brief reason for the referral and documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of

intervention. (Cal. Code Regs., tit. 5, §3021, subd. (b).) Upon initial referral for assessment, parents shall be given a copy of their rights and procedural safeguards. (Ed. Code §56301, subd. (c).)

Education Code section 56320 provides that an individual assessment of the pupil's educational needs must be conducted by qualified persons before any action can be taken with respect to the initial placement of an individual with exceptional needs in a special education instruction. Education Code section 56320, subdivision (f), adds, in pertinent part, that the pupil must be assessed in all areas related to the suspected disability including, if appropriate, health and development, language function, general intelligence, academic performance, and social and emotional status.

A school district shall develop a proposed assessment plan within 15 calendar days of referral for assessment, unless the parent agrees in writing to an extension (Ed. Code §56043, subd. (a)), and shall attach a copy of the notice of parent's rights to the assessment plan (Ed. Code §56321, subd. (a)). A parent shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision whether to consent to the assessment plan. (Ed. Code §56403, subd. (b).) A school district cannot conduct an assessment until it obtains the written consent of the parent prior to the assessment (unless the school district prevails in a due process hearing relating to the assessment); assessment may begin immediately upon receipt of the consent. (Ed. Code §56321, subd. (c).) Thereafter, a school district must develop an individualized education program required as a result of an assessment no later than 50 calendar days from the date of receipt of the parent's written consent to assessment, unless the parent agrees in writing to an extension. (Ed. Code §56043, subd. (d).)

2. Issue--Based on Findings 1 – 17 above, the evidence presented at the hearing established that the school district conducted appropriate assessments of the student, obtained the parents' participation and input, and determined the student's needs and present levels of skills and functioning. After reviewing the student's disability due to autism, his levels of functioning, and his educational and medical needs, the school district

designed an educational program to facilitate learning and academic achievement. The IEP included placement at a prekindergarten moderate learning center with related services in occupational therapy, adapted PE, speech and language therapy, intensive behavioral intervention, and extended year services. The school district also developed appropriate goals for the student in his areas of need. In addition, the school district incorporated into the IEP the recommendations of a physician consultant to help ensure that the school environment would meet the student's medical, dietary, and safety needs.

In other words, the evidence demonstrated that the school district developed and designed an individualized educational program for the student that was reasonably calculated to provide him with some educational benefit in the least restrictive setting. The school district's offer of special education and related services following the initial IEP meetings in December 2004 and February 2005 offers and its subsequent offer of the same placement and services at the annual IEP meeting in February 2006 comported with the student's individualized educational program.

Therefore, it must be concluded that the school district's offers of special education and related services at the initial IEP meetings in December 2004 and February 2005 and then again later at the annual IEP meeting in February 2006 constituted free appropriate public education under IDEA and the Education Code.

3. Prevailing Party--Under Education Code section 56507, subd. (d), this Decision must indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Pursuant to said mandate, it is determined that petitioner school district prevailed on each and every issue heard and decided in this matter.

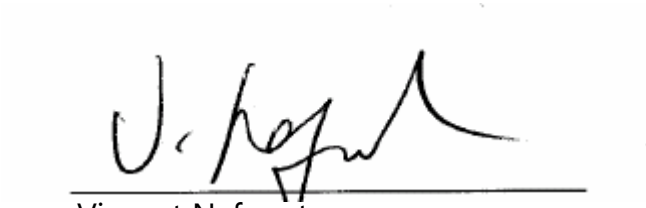
Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The due process requests of petitioner Lowell Joint School District in Case Nos. N2005121007 and N2006030513 are granted, based on Conclusions of Law Nos. 1 - 3 above. The individualized education program first developed by petitioner school district in

December 2004 and February 2005 and offered to the student at these initial IEP meetings and then re-offered to the student at his annual IEP meeting in February 2006 constituted the provision of a free appropriate public education to the student under federal and state law. In addition, no legal basis was shown to exist in these matters requiring the school district to reimburse the parents for having a home program for the student.

Dated: June 29, 2006



Vincent Nafarrete

Administrative Law Judge

Office of Administrative Hearings

NOTICE OF APPEAL RIGHT

This is the final administrative decision and both parties are bound by this decision. Under Education Code section 56505, subdivision (k), either party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt of the Decision.