Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

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D.C. BOARD OF ZONING
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February 23, 2006

Mr. Geoffrey Griffis
Chair
Board of Zoning Adjustment
441 4th Street, NW
Suite 210-S
Washington, DC 20001

RE: Application No.17383, The Lab School of Washington

Dear Chairman Griffis:

This letter is in response to the Board's request for ANC 3D to respond to the "great weight" issue raised by Allison Prince in the course of the hearing on The Lab School of Washington on November 22, 2005. Due to a medical emergency, a representative of ANC3D was not available at that point in the hearing to address Ms. Prince's allegations, and we appreciate the opportunity to set the record straight on this important matter.

During the hearing Ms. Prince "moved to strike the ANC report ... [because] ... the final meeting was conducted in violation of longstanding procedures with respect to the operation of ANCs" (Transcript at 227). Ms. Prince alleged that the ANC met privately and that therefore its opinions on The Lab School are not entitled to great weight. Ms. Prince's allegations are factually and legally erroneous, and ANC 3D finds this tactic by Ms. Prince to be highly disingenuous in the context of the proceeding.
As Ms. Prince was well aware, the ANC sat through presentations by The Lab School on three occasions, at public meetings that were duly noticed in accordance with DC law and regulations and the commission's own bylaws. As required, the commission's meeting were open to the public and all official actions, including votes on resolutions pertaining to The Lab School application, were taken at a public meeting.

We are confident that the ANC's actions were in full compliance with the Sunshine Law. Long-standing interpretations of the District's Sunshine Law by the Office of the Corporation Counsel have made clear that the ANC may only take official action at a meeting which is open to the public (see March 21, 2000 Letter to the Honorable Charlene Drew Jarvis, invalidating the election of ANC officers at a non-public executive meeting). In a February 26, 1997 letter to Commissioner Jonda McFarlane, the Corporation Counsel clarified that a board or commission that is subject to the Sunshine Law may meet in a non-public meeting, but may not at such meeting formally vote on or informally decide a matter

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that is required to be voted on at a public meeting. Significantly, the letter continues: "it is only when a board or commission takes 'official action' that it must do so at a meeting that is open to the public." We have further confirmed our understanding of the Sunshine Law with the Office of Advisory Neighborhood Commissioners, and do not believe, based on interpretations by the Corporation Counsel, that any violation occurred.

Applying the applicable law to the present situation, the frivolous nature of Ms. Prince's allegations are clear. The November 22, 2005 ANC meeting was a public meeting, as to which proper public notice was given. The ANC never left the stage where we normally sit during our meetings in the Sibley Hospital Auditorium. However, as we began our deliberations very late into the evening somewhere around 10:30 PM, it appeared that there was some confusion among the commissioners as to the matters upon which the commission was being asked to make recommendations. The commission had heard a large amount of conflicting testimony from The Lab School, including conflicting information about the number of students and faculty, the number of existing and proposed parking spaces and the school's long-term plans. The commissioners spent a relatively short amount of time (not the one hour alleged by Ms. Prince) trying to clarify amongst themselves the best way to delineate the issues for purposes of formulating a resolution or resolutions. No official action was taken in private. It was not the commissioners' intention to decide issues or adopt agreed-upon positions; rather we were seeking to clarify the issues for consideration. Following the short conference, the commission chair publicly proposed a resolution at the meeting which divided the Lab School's application into four areas for consideration and the commissioners formally voted on the resolution in public. Significantly, during this process, although Ms. Prince was in the audience, no objection was made by her or by Mr. Kilsheimer, a Lab School trustee who was also in the audience.

With respect to other matters alleged by Ms. Prince:

Ms. Prince alleges that the ANC went into a private session ostensibly to discuss the possibility of postponement [of the BZA hearing]. Following the incomplete presentation by the Lab School's traffic expert, the commission asked Ms. Prince if a postponement might be possible to allow time to address the traffic report and local parking options. Ms. Prince responded that the BZA had been very unreceptive lately regarding postponements and she would not even attempt to request one. That ended the commission's discussion on a postponement of the BZA hearing and there was no "private session" discussion of a postponement.

Ms. Prince alleges that at the end of the private session, the ANC presented its pre-formulated resolution that had been worked out apparently in the private session and the postponement had nothing to do with a postponement request. There was no resolution developed prior to the commission's meeting. ANC 3D does not meet in executive session prior to monthly meetings. As noted above, there was no further discussion of a postponement following Ms. Prince's statement that she was unwilling to entertain such a request. The private session to which Ms. Prince refers was six commissioners sitting on

the stage at a public meeting in full view of the remaining audience members (without a microphone) discussing four areas of the application, a session which was not objected to by Ms. Prince or any audience member. The majority of the discussion centered on a concern about how to enable the school to retain as many faculty/staff members as possible, consistent with the provisions of § 2101.

Over the course of our three meetings with the school, which began after 9:00 PM to accommodate Ms. Prince's schedule, commission concerns were presented to and discussed at length with Ms. Prince and Mr. Kilsheimer and further concerns were raised of Ms. Prince in a letter from the Single Member District Commissioner, Ann Heuer. The commission does not normally interact with audience members or attorneys once our deliberations have begun unless the commission is in need of clarification. There was no attempt to keep any information from Ms. Prince or the remaining members of the audience; and, the commission outlined the basis for its decision and vote. Given the commission's good faith, and sincere efforts to work with The Lab School to find a way to accommodate the school's dramatic growth, it is troubling to find Ms. Prince seeking to divert attention from the school's substantial parking issues by attacking the commission in this fashion.

I am confident the commission's final meeting with The Lab School was properly conducted, and in compliance with all applicable laws, regulations and policies, including the Sunshine Law and the commission's bylaws. Further, our letter fairly presents our findings based on the three meetings with The Lab School, their submission and our subsequent deliberations on the four areas outlined in the school's BZA Application. The Board of Zoning Adjustment should grant Advisory Neighborhood Commission 3D the "great weight" to which it is entitled under DC Law.

Sincerely,

Jill Stern

Jill Stern
Chair

cc: Allison Prince