OSSE
STUDENT HEARING OFFICE
FEBRUARY 19, 2013

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

Parent, on behalf of Student[1],

Petitioner,

v.

District of Columbia Public Schools,
Respondent.

Hearing Officer: Gary L. Lieber

Case No: 2012-0780

Hearing Dates: January 22, 2013
February 1, 2013 and February 8, 2013

HEARING OFFICER'S DETERMINATION

Appearances: *Elizabeth J. Jester, Esquire for Petitioner*
Tanya Chor, Esquire for Respondent

Introduction and Procedural Background

This case was brought as a due process complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended 20 U.S.C. §1400 *et. seq.* and Title 5-E, Chapter 5-E-30 of the District of Columbia Municipal Regulations. Petitioner is the mother of Student, [redacted]. Petitioner alleges that Respondent committed several violations of IDEA by failing to 1) provide a dedicated aide to Student during the entire school day and to train that dedicated aide; 2) by failing to provide a mobile arm device as set forth in her IEP; 3) by allocating the cost of training Student's tutors on the assistive technology Student uses to the cost of independent tutoring provided for in an

[1] Personal identification information is provided in Appendix A and the Appendix must be removed prior to distribution.

existing settlement agreement resolving a prior Due Process Complaint; and 4) by failing to link up Student's assistive technology equipment to the white/smart board in Student's classroom.[2]

The Due Process Complaint was filed on November 19, 2012 (H.O. Exh. A).[3] Respondent District of Columbia Schools ("DCPS") filed a response to the Due Process Complaint on December 4, 2012, in which it denied that it had violated IDEA and otherwise denied Student a Free and Appropriate Public Education ("FAPE"). Respondent also expressly asserted that there were no facts alleged to substantiate any alleged harm to the Student (H.O. Exh. C). On November 29, 2012, the parties held a Resolution Meeting which did not result in an agreement that would dispense with the need for the Due Process Complaint Hearing (R. Exh. 21). On December 14, 2012, the undersigned conducted a prehearing conference (H.O. Exh. D). On December 21, 2012, a Prehearing Order was issued which, *inter alia*, set the date for the due process hearing as January 22, 2013, and, if not concluded, on January 23, 2013 (H.O. Exh. E). Five-day disclosures were timely filed on January 14, 2013. The hearing conducted on January 22, 2013, February 1, 2013, and February 8, 2013.[4] The hearing was closed to the public and was electronically recorded. Both parties were represented by counsel.

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[2] Another issue relating to a back up for a substitute nurse was withdrawn at the hearing due to an agreement between the parties on that issue.
[3] The Hearing Officer's Exhibits shall be referred to as H.O. Exh. ___; Petitioner's Exhibits as P. Exh. ___; and Respondent's Exhibits as R. Exh. ___.
[4] A continuance was granted extending the due date for the HOD. A motion for another continuance filed by Petitioner so as to permit rebuttal on a proposed fourth day of hearing was

The Record of Evidence

The Petitioner called the following witnesses: Assistive Technology Consultant, Student's tutor, Independent Special Education Consultant, and Mother. Respondent called Speech Language Pathologist at Student's school, Occupational Therapist at Student's school, Student's Teacher, Student's Special Education Teacher, Program Director, District of Columbia Office of Special Education, and Financial Manager, DCPS, Office of Finance.[5]

The following exhibits were admitted: Hearing Officer's Exhibits A through F; Petitioner's Exhibits 1 through 28; and Respondent's Exhibits 1 through 45.

Jurisdiction

This Hearing Officer has jurisdiction pursuant to IDEA, 20 U.S.C. §1415, the statute's implementing regulations at 34 C.F.R. §300.511 and 300.513 and the District of Columbia Code of Municipal Regulations ("DCMR") at 5-E §3029 and 5-E §3030. This decision constitutes the Hearing Officer's Determination, the authority for which is set forth in 20 U.S.C. §1415 (f)(3)(E) and 34 C.F.R. §300.513.

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denied by the Chief Hearing Officer. The Parties filed posthearing memorandum on February 15, 2013. The arguments set forth therein have been duly considered.

[5] The Financial Manager was listed as a possible witness pursuant to a Respondent's Supplementary Disclosure Statement dated January 16, 2013. I permitted his testimony on the basis that the need for his testimony could not be reasonably perceived until Petitioner filed her five-day disclosures which contained exhibits relating to the issue of payment of training of tutors. See P. Exhs. 21-23. Furthermore, there was ample time for Petitioner to prepare for his testimony which in fact did not take place until the third day of the hearing, more than three weeks after the Supplementary Disclosure.

Statement of the Issues and Relief Requested

As narrowed at the Hearing[6], the following issues were joined at the Hearing:

1. Whether Respondent has failed to provide FAPE to Student by not timely providing a dedicated aide to work with Student and by not training that aide on the use of Student's assistive technology ("AT") equipment?

2. Whether the Respondent has failed to provide FAPE to Student by not providing to her a mobile arm device?

3. Whether Respondent has failed to provide FAPE by failing to independently allocate the cost of training Student's tutors on Student's AT equipment and, instead, charging such costs as within a provision for compensatory education provided for in a settlement agreement of a prior Due Process Complaint?

4. Whether Respondent has failed to link the white/smart board in Student's classroom to her AT equipment and to provide training to Student's teacher to accomplish that linkage?

As relief, Petitioner requested that the undersigned issue an Order providing for affirmative injunctive relief in connection with these four discrete claims within certain deadline dates and that, in addition, Respondent shall fund 200 hours of independent tutoring to Student as compensatory education for these alleged violations of FAPE.

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[6] See n.2, *supra*. Additionally, because they were so interrelated, the undersigned combined in this HOD issues 2 and 3 raised in Petitioner's Due Process Complaint (issues 2b and 2c in the Prehearing Order) as one issue.

Prior Hearing Officer's Determinations and Settlement Agreement

There are two prior Hearing Officer Determinations involving the same parties. On July 5, 2010, Hearing Officer Jane Dolkart issued a decision in Case No. 2010-0541 (P. Exh. 27). On October 6, 2011, Hearing Officer Virginia A. Dietrich issued a Decision in Case No. 2011-0888 (P. Exh. 28). Aside from their being admitted in this proceeding, the undersigned has taken judicial notice of certain facts contained within those Decisions as shall be referenced in subsequent portions of this Decision. Additionally, on April 23, 2012, the parties entered in a Settlement Agreement of Case No. 2012-0124 (P. Exh. 26). Some of the terms of that Settlement Agreement are relevant to some of the issues in this case as shall be noted in the proceeding sections of this Decision.

Findings of Fact

After considering all of the evidence, the Hearing Officer makes the following Findings of Fact:

1. Student is a [redacted] attending _____ Elementary School and is in first grade (P. Exh. 9). She began attending _____ Elementary School in December 2011 (P. Exh. 8-3).

2. Student has a condition called Spinal Muscular Atrophy, Type 1 ("SMA"). She has virtually no use of her muscles except for one index finger and her eyes. She has difficulty moving her arms and legs against the pull of gravity (Testimony of Assistive Technology Consultant; P. Exh. 9-5). Since she has little use of her muscles, she required a dedicated nurse around the clock to move her and for other daily living activities. She must use a ventilator to

breath and a feeding tube to eat (R. Exh. 28-4; Testimony of Mother). Student can talk to a point but after saying a few words at one time, most people cannot understand what she is saying (Testimony of Independent Special Education Consultant). SMA is a progressive condition and it is expected that Student will completely lose her ability to speak in several years (Testimony of Occupational Therapist; Testimony of Teacher). She has lost muscle strength over the several years (P. Exh. 7-3). Despite these complex and extreme conditions limiting her physically, Student has no disabilities relating to cognition. Furthermore, she is, by all accounts, an enthusiastic young lady who makes great effort to participate in school and learn (Testimony of Teacher, Special Education Teacher, and Speech-Language Pathologist).

3. Student's latest IEP dated October 4, 2012, calls for ten hours per week of specialized instruction within a general education environment, 180 minutes per month of occupational therapy and 360 minutes per month of Speech-Language Pathology (P. Exh. 9-10).

4. Student is in a wheelchair during school. She communicates through assistive technology equipment including an AAC device and a device called an "eye gazer." The AAC device is loaded with software programs consisting of books and school lessons. The AAC device is connected to the eye gazer. She wears the eye gazer and by directing her eyes at that part of the program on the AAC device, she is able to communicate. She has been using this device for three to four years. She apparently would prefer to talk more than use the eye gazer. The eye gazer, however, enables her to better

participate in school and learn. Among other things, she tires from too much use of the eye gazer (Testimony of Independent Special Education Consultant; Testimony of Teacher; Testimony of Special Education Teacher).

5. Student's prior IEP did not provide for a dedicated aide (P. Exh. 6-9; P. Exh. 8-2).

6. The April 23, 2012 Settlement Agreement relating to Case No. 2012-0124 stated that Respondent had trained the full-time nurse to provide paraprofessional instructional services and that Respondent would provide proof of such training within ten (10) days of that Agreement (P. Exh. 26-2). Respondent had determined that this was feasible because the nurse had stated that she spent in total approximately one hour of the day on Student's medically-related needs. The Program Director for OSEP also believed that having more than one aide was not the best plan to achieve the type of Least Restrictive Environment that had been put into effect for Student (P. Exh. 8-2; Testimony of Program Director, District of Columbia OSEP).

7. The April 23, 2012 Settlement Agreement provided that the nurse, the independent tutor and relevant staff members at _____ Elementary School would be trained on the eye gazer equipment by the end of the 2011-2012 school year (P. Exh. 26-2).

8. The April 23, 2012 Settlement Agreement also stated that it was in full satisfaction and settlement of all claims in the then pending complaint (2012-0124) and any claim that Petitioner asserted in that case or could have asserted up until the date of the Settlement Agreement (P. Exh. 26-3).

9. On June 6, 2012, Mr. _____, Assistant Technology Coordinator issued an Assistive Technology Report regarding Student. In that report, Mr. _____ noted that on certain days starting on April 11, 2012 and ending on June 5, 2012, both Student and staff at _____ Elementary School went through practical training with the Eye Gazer System – Eco 2 and Ecopoint versions. Student demonstrated the ability to navigate the device menus and sub-menus and completed tasks including, relating to "calibration, keyboarding and active participation classroom activities...". The Eye Gazer System was recalibrated and the latest programs were installed in the system. The team of teachers and staff similarly were trained on the system including its "maintenance, day-to-day operation and customized application of the Eye Gazer System" (P. Exh. 10; R. Exhs. 5, 8, & 9). Moreover, just prior to and just after, Student's commencement at _____ Elementary School, in anticipation of her arrival, Student's Special Education Teacher and the Student's speech pathologist had taken Eye Gazer training (R. Exh. 1-4; Testimony of Special Education Teacher; Testimony of Occupational Therapist).

10. On October 4, 2012, Respondent issued an updated technology report regarding Student. In that report each and every teacher of Student, and school specialists (*e.g.*, occupational therapists, physical therapists, and other members of her "educational team", *e.g.*, nurse) was held responsible in their particular course or subject area for assisting Student in meeting her goals in her core subjects, speech and language, health/physical, motor skills/physical development and daily life skills. All were thus responsible for

understanding and operating the Eye Gazer System since that AT equipment was integral to Student's learning experience (P. Exh. 12).

11. Unlike the earlier IEP (P. Exh. 6), Student's current IEP calls for the support of a full-time Dedicated Aide (P. Exh. 9-9). The Dedicated Aide commenced work in mid-November (Testimony of Special Education Teacher). The Dedicated Aide received initial training on the Eye Gazer System. That training has been supplemented on a daily basis by the Special Education Teacher's continuing and daily interaction with Student and the Dedicated Aide (*Id.*). This training has been sufficient to enable the Dedicated Aide to assist with the eye gazer consistent with her job duties (Testimony of Special Education Teacher). Furthermore, the teachers and specialists at the school that work with Student have received sufficient training on the Eye Gazer System and do not have any regular persistent problems with its operation. Student's teacher was trained by Special Education Teacher during the fall of 2012 and the evidence was unrefuted that such training has been sufficient for teacher to assist Student with the AT equipment (Testimony of Teacher and Special Education Teacher). The introduction of the Dedicated Aide has assisted Student's Teacher in meeting Student's needs because it better enables Teacher to teach to the entire class while at the same time, permitting Student to become a regular participant and contributor to the class (Testimony of Teacher).

12. A "mobile arm to arm support" was listed as a device or instrument which Student would be provided in her "regular education classes or other

education related settings" in both her October 2011 and October 2012 IEP's (P. Exh. 6-9; P. Exh. 9-8). The Respondent procured a Mobile Arm Device in December 2012. Previous to that, the Student's arm was supported by a splint on her arm that enabled Student to slightly lift her arm. Occupational therapist, who had commenced work at _____ Elementary School in September 2012, recognized at the October 4, 2012 IEP meeting that the splint was not technically a mobile arm device. Thereafter, she obtained research material on various devices and finally caused Respondent to purchase the Zonco Mobile Arm Valet, a complicated yet low technology device that was custom fit for Student. The search for the correct device that Student could use was undertaken solely by the Occupational Therapist without the assistance of anyone else, including the institution where Student resided since that group home did not have such a device. The Occupational Therapist attached this Mobile Arm Valet to Student for approximately 45 minutes a week. Even with it, the Occupational Therapist must hold Student's arm for Student to obtain any value from the device. In that respect, the device does not aid Student in any in-class endeavors. As such, it does not advance her ability to write, color or turn a page of a book. Rather, it provides an enhanced sensory experience and a small degree of increased movement in her arm. It may also provide more comfort while she sits in her wheelchair over long periods of the day (Testimony of Occupational Therapist; R. Exh. 40).

13. The Complaint in this case alleged that the Respondent had failed to reimburse tutors who received training in the Eye Gazer System and that the

cost of that training had instead been deducted from the cost of compensatory education provided in the April 23, 2012 Settlement Agreement (H.O. Exh. A, pp. 5-6; P. Exh. 26-2, ¶G). The evidence presented demonstrates that the tutor submitted bills for their training and that the Office of Special Education for the District of Columbia disputed certain of these charges and advised the vendor of a special procedure established pursuant to a Federal District Court proceeding[7] by which it could challenge the initial decision of the Office of Special Education (Testimony of Program Director, Office of Special Education; R. Exhs. 42 & 43; P. Exhs. 21 & 22). The vendor never submitted any challenge (Testimony of Program Director, Office of Special Education).

14. The Student's AT Plan called for Student's Eye Gazer System to be linked to the white/smart board used by Teacher to better enable Student to participate in class (P. Exh. 12). The white/smart board is a large board with touchscreen capability. It was used in the first grade class for a period of time, but is now used in the third through fifth grade. Student's teacher was not comfortable using the white/smart board. Students in her class, including Student, now have access to other devices such as mp3 players and iPads that serve similar functions as the white/smart board (Testimony of Teacher).

15. Credibility

The Findings of Fact 1-14 are rendered based largely, if not exclusively, upon undisputed testimony. In some cases, credibility determinations were employed as a corroborating basis for the Finding. In such cases, the

[7] *See*, Order dated August 5, 2009 Regarding Payment for Services to Class Member, *Petties v. District of Columbia*, Civil Action No. 95-0148.

undersigned found the witnesses presented by Respondent very credible and where at odds with Petitioner's witnesses, Respondent's witnesses were credited. Petitioner's witnesses were also credible, but in the main their testimony was either too general, lacking the specificity of Respondent's witnesses (Mother) or the testimony was too remote in time (Assistive Technology Consultant) or the witnesses worked with Student outside of the school environment and thus could not testify as to the AT training conducted within the school or to the interaction between Student and those seeking to educate or assist her during the school day (Student's Tutor and Independent Special Education Consultant).

Analysis and Legal Conclusions

The Individuals with Disabilities Education Act ("IDEA") provides that States and Territories, including the District of Columbia, that receive Federal educational financial assistance must establish policies and procedures to ensure that they extend a "Free Appropriate Public Education" to children with disabilities. Free Appropriate Public Education or FAPE is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability." 20 U.S.C §1401(28); *see also* 34 C.F.R. § 300.39 and DCMR Title 5-E § 3001.1. The term "child with a disability" is defined to mean a child with any one of a certain named type of condition or impairment that "by reason thereof, needs special education and related services." 20 U.S.C. §1401(3)(i) and (ii). The statue provides that States may issue their own regulations supplementing the Federal scheme. Accordingly, the District of

Columbia has enacted its own provision defining a student with a disability. District of Columbia Code § 38.2561.01(14) and DCMR Title 5-E § 3001. In order to comply with IDEA, each State and Territory receiving Federal educational assistance must act affirmatively to ensure that "all children with disabilities residing in the State . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated." *Reid v. District of Columbia*, 401 F.3d 516, 518-519 (D.C. Cir. 2005). "Once such children are identified, a 'team' including the child's parents and select teachers, as well as a representative of the local educational agency with knowledge about the school's resources and curriculum, develops an 'individualized education program' or 'IEP' for the child." *Id.* at citing 20 U.S.C. §§1412(a)(4), 1414(d).

The burden of proof in a due process hearing is borne by the party that initiated that action. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); DCMR Title 5-E, Chapter 5-E §3030.14.

An "assistive technology device" is defined as "any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain or improve functional capabilities of a child with a disability." 20 U.S.C. §1401(1)(A). " . . . [A]lthough assistive technology will almost always be beneficial, a school is only required to provide it if the technology is necessary. Moreover, the failure to provide assistive technology denies a student FAPE only if the student could not obtain a meaningful benefit without such technology." *J.C.*

v. New Fairfield Bd. of Educ., 56 IDELR 207, at *18, 111 LRR 23234 (2011) citing *High v. Exeter Tp. Sch. Dist.*, 2010 WL 363832 (E.D. Pa. Feb. 1, 2010). Finally, "[t]he need for a specific assistive technology device/service must be determined according to the individual needs of the particular child and not according to lists defined according to the type of disability." *Letter to Naon* (Office of Special Education Programs), 22 IDELR 888, at *2, 22 LRP 3106 (1995).

With these principles described, I shall now discuss the specific issues in the case.

The Use of an Aide and the Training of the Aide

The mother testified that she saw an educational aide in December when she visited the school and that, at that time, the book the class was studying was not scanned into the AAC device (Testimony of Mother). The independent consultant stated that there was no dedicated aide in September 2012 (Testimony of Independent Special Education Consultant). This witness, by her own admission, was rarely at the School (*Id.*).

In contrast, the Program Director for DC-OSEP testified that she originally thought having two persons with Student every minute or nearly every minute at school would undermine the Least Restrictive Environment that both the parent and the LEA were promoting. Accordingly, the nurse was trained on the eye gazer and to be a paraprofessional educational assistant from the beginning of the school year. Later, the Program Director recognized that that was not working and decided that a full-time aide would be retained

(Testimony of Program Director, Office of Special Education Programs). At around that point, the Respondent agreed to include a full-time aide in the annual revised IEP of October 2012 (P. Exh. 9). An aide was thereafter recruited and became full-time in early to mid-November 2012 (Testimony of Special Education Teacher; Testimony of Teacher). There was ample testimony that the aide was trained, including on the eye gazer, and that she capably assists the Teacher with respect to Student's work.[8] *See also* Finding of Fact ¶11. Additionally, the evidence was substantial that all her teachers and everyone else that came in contact with the Student were sufficiently trained on the Eye Gazer System. The training of these people further buttresses the fact that there was a foundation of knowledge with respect to the eye gazer that demonstrated that the aide was in fact trained as well. *See* Finding of Fact ¶¶ 9-11.

The undersigned concludes that any delay was minor and that there was no discernible harm to the Student. Accordingly, Petitioner failed to meet her burden of proof regarding the retention and training of the aide.

The Mobile Arm Device

There is no dispute that this device was provided on an untimely basis. However, given the circumstances surrounding the use of the device, I conclude that Respondent did not violate FAPE by not obtaining the device

[8] Petitioner's position is further undermined by the fact that when in use, the Student (and not the staff) operates the Eye Gazer. The aide and any other professional is there to assist in loading it, recalibrating it when necessary and generally maintain it. These school officials do not, however, operate it (Testimony of Teacher and Special Education Teacher).

from the time of the Settlement Agreement in April 2012[9] until December 4 when it was received by the School (Testimony of Occupational Therapist). First, no representative of Petitioner ever identified a specific or even general type of mobile arm device that should be obtained. Second, once she realized that the School should attempt to obtain something better than the splint, the Occupational Therapist single-handedly undertook an extensive campaign to find a custom made mobile arm device (Testimony of Occupational Therapist). Third, while the device is important to Student, its employment does not materially affect her functional aptitude in the classroom. As noted by the Occupational Therapist, it is almost exclusively a device that gives Student some added sensory experience. Given her condition this is important, but it does not translate into an educational benefit. Fourth, the reference to "mobile arm to arm support" is ambiguous and may have lent credence to the belief that use of a splint was enough. Fifth, that reference to "mobile arm to arm support" in the IEP is isolated and not linked to any individual goal set forth in the IEP in contrast to the Eye Gazer System which is prominently mentioned (P. Exh. 9-6; *see also* Finding of Fact ¶12).

Standing alone, a failure to implement each and every aspect of an IEP is not a *per se* violation and, may, based on the surrounding circumstances, be deemed *de minimus*. Based on the facts just described above, I conclude that the delay in obtaining the device constituted a *de minimus* failure to implement

[9] *See* Finding of Fact, ¶8.

the IEP not constituting a violation of FAPE. *See Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir.) *cert. denied*, 531 U.S. 817 (2000).

Accordingly, I shall dismiss this allegation of the Complaint.

The Cost of Training the Tutors on the Eye Gazer Equipment

Petitioner claims that the failure to pay the vendor for the cost of training the tutors called for in the Settlement Agreement's ¶G and allocating those costs as dollars used up against the awarded compensatory education is a denial of FAPE. However, there is no evidence that credit towards compensatory education is being drawn down to account for this cost. Moreover, upon further review of the record, particularly certain exhibits, as noted by Respondent, this is <u>not</u> a dispute over which bucket the costs should be borne;[10] rather, this is a payment dispute. As noted by the Financial Manager for the Office of Special Education for the District of Columbia, there is a procedure one must employ pursuant to a Court decision and regulation that a vendor seeking reimbursement for services rendered in an IDEA proceeding must follow. *See Petties v. District of Columbia*, at n. 7; 5 DCMR, Title 5-A, §2900 *et seq.* entitled, "Invoice Processing for Special Education Providers Serving District of Columbia Children with Disabilities Funded by the District of Columbia." *See also* Finding of Fact ¶13.

Based upon this analysis, I agree with Respondent that this is not a question relating to the provision of FAPE and, that there is, in fact, a separate

[10] In an effort to better define the issue at one time during the hearing, the Hearing Officer described the issue, at least potentially as whether the costs should go in the "compensatory education bucket" or another bucket of unreimbursed expenses.

administrative procedure that one must follow. Accordingly, I rule that there is a lack of jurisdiction over this claim. For this reason, I shall dismiss it.

Linkage to the White/Smart Board

The allegation here is not to impose the white/smart board as an assistive technology device, but rather to link the Eye Gazer System to this white/smart board. *See* P. Exhs. 12-1 & 9-8 (incorporating P. Exh. 9 into P. Exh. 12, the IEP). *See also* Finding of Fact ¶14. In October 2012, the white/smart board was in use in Student's class at least part of the time. Later, it was removed for a variety of reasons having nothing to do with Student or her AT equipment. It was replaced with other technological communication devices, namely mp3's and iPads (Testimony of Teacher; *see also* Finding of Fact ¶14). The fact that the first grade class no longer has the white/smart board in use in its class renders this allegation moot. Alternatively, I find that Student was not deprived of any educational benefit since she obtained access to the equipment that effectively replaced the white/smart board.

For these reasons, this allegation is dismissed.

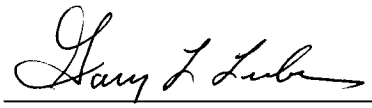
ORDER

All of the allegations raised by Petitioner in this case are hereby dismissed.[11]

This case shall be, and is, hereby closed.

IT IS HEREBY ORDERED.

Date: 2-15-13



Impartial Hearing Officer

Copies to: All Counsel of Record
District of Columbia Public Schools
Student Hearing Office, OSSE
Chief Hearing Officer, OSSE

[11] Respondent is the prevailing party.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1451(i)(2)(B).