

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
One Judiciary Square  
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TEL: (202) 442-9094  
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In RE: The Student

Name of School Attending:  
BALLOU HIGH SCHOOL

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**STUDENT DISCIPLINE**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. Introduction**

Date of Incident: January 24, 2012

Date of Hearing: February 7, 2012 Time: 11:15 a.m.

Proposed Disciplinary Action:  Long Term Suspension of 90 days

**Parties at Hearing:**

**II. Recommendation of Administrative Law Judge**

- Judgment for Appellee (DCPS): Affirm Proposed Disciplinary Action
- Modify Proposed Disciplinary Action
- Judgment for Appellant (Student): Dismiss Proposed Disciplinary Action

**III. Jurisdictional Statement**

Pursuant to a Memorandum of Understanding entered between the District of Columbia Public Schools (DCPS) and the Office of Administrative Hearings (OAH), OAH serves as the

Chancellor's designee for student discipline hearings required to be held before an impartial hearing officer. OAH is an independent agency that is a neutral, impartial tribunal that holds hearings and decides appeals from various agency decisions. DCPS is bound by these findings of fact and conclusions of law and may not change them. Based on these findings of fact and conclusions of law, DCPS will determine the appropriate discipline to be imposed. Although a recommendation for discipline has been made in these findings, DCPS is not bound by the recommendation and may impose any discipline permitted by the student discipline regulations. Applicable regulations can be found in the District of Columbia Municipal Regulations (DCMR) at 5 DCMR B2500 (DCPS student discipline regulations) and 1 DCMR 2900 (OAH student discipline rules).<sup>1</sup>

#### **IV. Due Process**

Pursuant to the District of Columbia Public School's student discipline regulations, a student who has been suspended for 11 days or more or who has been expelled shall have a disciplinary hearing before an impartial hearing officer. 5 DCMR B2505.15. The regulations require that DCPS provide the parent with written notice of the recommended disciplinary action that sets forth the reasons for the discipline and that DCPS notify the parent in writing that a hearing is scheduled at OAH. 5 DCMR B2506.2.

On or about January 29 or 30, 2012, DCPS provided the parent with a written notice of the proposed disciplinary action. On February 1, 2012, DCPS notified the parent by telephone that a hearing was scheduled at OAH on February 7, 2012 at 11:15 a.m.

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<sup>1</sup> Copies of the applicable regulations in the DCMR can be found on line at <http://www.dcregs.dc.gov/>.

The parent and the student appeared for the hearing and were given the opportunity to present evidence and cross-examine DCPS's witnesses. The Dean of Students testified on behalf of DCPS. The Student testified on her own behalf. Accordingly, due process procedures have been properly followed.

## **V. Findings of Fact**

The Student is a 10<sup>th</sup> grade student at Ballou High School. On January 24, 2012, several students approached two sisters nicknamed Sister 1 and Sister 2, inside Ballou, during school hours, and tried to start a fight. The fight was broken up. The Student was not present for this incident. The Student knew at least one of the people in the large group, and had told this person or people earlier that they should not start a fight in school.

Later that day, as the students were going home from school along a "safe passage" route, a fight broke out between the two sisters, joined by their adult sister, and a group of 8 other students, most of whom were involved in the attempted in-school fight earlier that day. The group of 8 later claimed to be "defending" XX, a 9<sup>th</sup> grader. The 3 sisters had mace, and possibly a taser. Someone in the group of 8 had mace. The fight started in front of several Metropolitan Police Department officers who were monitoring the safe passage route.

The Student saw the police present, and knew that the group of 8 was much larger than the 3-sister group. Nonetheless, The Student handed her purse to a friend, joined the fight, and started pulling or pushing an unidentified person off of XX. This meant that the fight was now a group of 3 versus a group of 9. The police broke up the fight shortly thereafter. One of the 3 sisters was sprayed by mace during the fight. One person, not The Student, was arrested, but the

charges were subsequently dismissed. At an unknown point before or after the fight, The Student learned that someone on XX's side of the fight had mace.

Someone videotaped The Student handing her purse to her friend and walking toward the fight, and posted the video on Facebook the next day. The video did not show the fight itself. The Student saw the video on Facebook, as did Dean of Students.

Just after the fight broke up, Mr. interviewed several students about the fight, including The Student. The sisters and their mother, as well as someone from XX's side, identified The Student as participating in the fight. Exhibit 102 at 2. The Student submitted a written statement in which she described a fight in which many girls piled on. Exhibit 103. On January 25 or 26, 2012, Mr. held an Administrative Conference, which parents and students from both sides of the fight attended.

DCPS immediately suspended The Student. At the time of the hearing, she had missed 6 school days. DCPS made an educational packet available for pick-up. The Student did not receive the educational packet until the hearing in this matter.

In the first semester of the 2011-2012 school year, DCPS suspended The Student three times for "causing disruption." DCPS did not provide information about what The Student did to cause DCPS to issue any of the previous suspensions.

## **VI. Conclusions of Law and Appropriateness of Proposed Disciplinary Action**

The Notice of Proposed Disciplinary Action charged the student with "Participating in a group fight which has been planned, causes major disruption to school day or result in substantial bodily injury," which is a Tier V infraction under DCPS's regulations. 5 DCMR

B2502.5(b)(11). Based on the established facts in this case, I find that the student committed the infraction of “Fighting which creates substantial risk of or results in minor injury,” which is a Tier IV infraction under DCPS’s regulations. 5 DCMR B2502.4(a)(9). For Tier IV infractions, the regulations provide for the following possible disciplinary responses: off-site Short-Term Suspension; off-site Medium-Term Suspension; or off-site Long-Term Suspension. 5 DCMR B2502.4(b).

In this case, DCPS recommended a disciplinary response of Long-Term Suspension, which is a disciplinary response available only for Tier IV and Tier V infractions. However, I find that DCPS has failed to meet its burden of proving, by a *preponderance of the evidence*, that the student committed a Tier V infraction. A preponderance of the evidence is such proof as leads the fact-finder to find that the existence of a contested fact is more probable than its nonexistence. *Jadallah v. D.C. Dep’t of Emp’t Servs.*, 476 A.2d 671, 675 (D.C. 1985); *see also Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 475 (D.C. 2004) (recognizing that all administrative decisions are subject to this convention). There must be substantial evidence in the record to support a finding. *Id.* Substantial evidence means “more than a scintilla” and is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion of law.” *Jadallah*, 472 A.2d at 676.

Here, the evidence shows that on January 24, 2012, a 9-on-3 fight occurred, and that The Student participated in it, on the side of the 9. Much of DCPS’s evidence came from the “victims,” the three sisters, and their mother. Thus most of the DCPS evidence was comprised of hearsay, from sources which may have been biased. *Compton*, 858 A.2d 470. However, The Student corroborated that she knew XX, who appears to be the root cause of this fight. The

Student also admitted that she joined the fight, ostensibly to “defend” XX, even though she saw that police were present when she joined the fight.

DCPS has not demonstrated that the fight was planned, or if it was planned, that The Student participated in the planning. The evidence demonstrates that, earlier in the school day, a fight almost started inside the school, and that the almost-fight had many of the same participants as the actual fight that happened after school ended. This raises suspicion that the students who could not fight in school decided to re-schedule the fight for the walk home. However, the earlier attempt, standing alone, does not carry DCPS’s burden to prove by a preponderance of evidence that the fight was planned.

Additionally, DCPS acknowledged that The Student did not participate in the almost-fight inside the school. The Student testified that she told one person that they should not fight inside the school. This testimony, standing alone, does not demonstrate that The Student participated in any planning for the actual fight after school ended which may have occurred.

DCPS also has not demonstrated that the fight “cause[d] major disruption to school day,” since it acknowledged that the fight occurred after the students were dismissed from school. DCPS also has not demonstrated that the fight resulted in “substantial bodily injury.” DCPS presented a document written by Mr. which states that one of the sisters was maced. Exhibit 102 at 2. However, the document does not elaborate on whether that sister sustained any injuries, much less required a doctor’s care, or had lasting and/or debilitating injuries which might support the claim of “substantial bodily injury.” Indeed, Mr. testified that he met with the sisters and their mother on the same day as the fight. Thus even if one of the sisters was injured by the mace, the injury was not substantial.

Further, DCPS alleged, but did not prove, that this fight was part of an ongoing two-year fight. Mr. called the group of 8 “friends” of The Student, but The Student credibly denied that several of them were her friends. She admitted that she was friends with XX, and that she knew the person from the group of 9 who had the mace. Other than that, the evidence is silent as to who The Student knew, and how long she knew them, and why DCPS claims that this was an ongoing 2-year dispute. This does not mean that the January 24, 2012 fight was not, in reality, the latest in a series between this set of people. It just means that DCPS did not give evidence in court to prove that the fight was ongoing.

Finally, the evidence demonstrated that mace was used during the fight, that both sides had mace during the fight, and that one of the sisters was sprayed by the mace. However, the evidence does not link The Student directly to the mace. The evidence is silent as to who sprayed the mace. More importantly, the evidence is murky, at best, about whether The Student knew that either side had mace before she got involved in the fight, or whether she learned about the mace after the fight was over.

The regulations provide that disciplinary responses should be “logical, appropriate, and instructive.” 5 DCMR B2500.9. Although I find that the Student’s behavior amounted to a Tier IV infraction, I find that the proposed discipline of Long-Term Suspension remains appropriate, but I recommend that DCPS reduce the suspension to 19 days, including the 6 days that The Student has already spent at home.

In making a recommendation, I have considered the following factors: the nature of the infraction; the circumstances relating to the infraction; the age of the student; the student’s previous behavioral history; whether injury occurred; whether a weapon was involved; the safety

of other students and staff. 5 DCMR B2500.9. Specifically, I have considered that this was a 9-on-3 fight, and that The Student joined the larger side, knowing that the police were right there and about to break up the fight. The Student is 17 years old, and should have known better than to join an ongoing fight. However, I also considered that The Student told someone from the same group not to participate in the attempted fight in school earlier in the day, and that she did not start the actual fight.

I also considered that DCPS previously suspended The Student for “causing disruption” three other times in the same school year. However, I could only give limited consideration to this factor, since the evidence does not state what conduct of The Student’s caused DCPS to issue the suspensions.

I considered that one of the 3 sisters “was maced.” However, the record contains no further information on what, if any, injury arose from the macing, and no information on who actually sprayed the mace. As noted above, the record also does not make clear if The Student knew at the time of the fight that one or both sides had mace, or whether she learned this information after the fight. Thus, I cannot draw any conclusions about mitigation or aggravation because of weapons or injuries from the evidence presented at the hearing.

Finally, I considered the safety of other students. The evidence demonstrates that the fight took place after school hours and outside the school, where by-standers had more ability to avoid the fight. The evidence does not demonstrate that any innocent by-standers were dragged into the fight, but rather that all the participants joined, as The Student did, by deliberate choice. Thus, the safety of students outside the fight was not particularly at risk. The safety of the students within the fight was seriously at risk, especially given that mace, and possibly a taser,

were in the mix. This put The Student herself, as well as the rest of the fighters, at risk for serious injury. The Student's demeanor in court demonstrated that she does not understand, or chooses to ignore, that she could have been seriously, and possibly permanently, injured in this fight. It was by sheer luck that she was not injured.

This is NOT a final administrative decision. These findings of fact and conclusions of law are being sent only to the District of Columbia Public Schools, Office of Youth Engagement, in order for DCPS to issue a Final Notice of Disciplinary Action, which will include a copy of this Order.

Date: February 8, 2012

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Sharon E. Goodie  
Administrative Law Judge

**Certificate of Service:**

I hereby certify that on \_\_\_\_\_, 2012, this document was caused to be served upon the District of Columbia Public Schools by uploading the document to DCPS's Student Behavior Tracker (SBT).

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Clerk / Deputy Clerk / Paralegal