

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**
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In RE: THE STUDENT

Name of School Attending:
SPINGARN SENIOR HIGH SCHOOL

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

I. Introduction

Date of Incident: February 1, 2012

Date of Hearing: February 16, 2012 Time: 9:15 a.m.

Proposed Disciplinary Action: Long Term Suspension of 83 days
 Expulsion

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).¹

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 February 7, 2012, DCPS provided the parent with a written notice of the proposed disciplinary action. DCPS notified the parent by first class mail, by email, and by telephone, that a hearing was scheduled at OAH on February 16, 2012 at 9:15 a.m. The student's parents, his

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

grandmother and the student appeared for the hearing with his attorney. Mr. was given the opportunity to present evidence and cross-examine DCPS's witnesses. testified on behalf of DCPS. The student did not present any witnesses. Accordingly, due process procedures have been properly followed.

V. Findings of Fact

The Student is a ninth grade student at Spingarn High School. Mr. issued locker 542 on the second floor to The Student a few weeks before the incident at issue here. Mr. testified that The Student is a friendly student who goes to class and does not get into trouble, except for a recent minor incident.

XX is on the support staff at Spingarn. He worked as a hallway monitor on February 1, 2012. When Mr. walked the hallway on the second floor that day between 9:00 and 10:00 a.m., he smelled an odor that prompted him to notify security and administration. He wrote and signed a statement to that effect. Exhibit (Ex)102B. XY is an assistant to the Principal at Spingarn. He too smelled a substance that he identified as marijuana and narrowed to locker 542. Mr. notified a police officer.

Metropolitan Police Department Officer arrived at the school at about 10:00 a.m. on February 1st. Soon after his arrival, he accompanied Mr. to the second floor where Mr. unlocked locker 542. In the locker was a sweatshirt and blue notebook. Mr. removed from one pocket in the sweatshirt plastic bags with a leafy substance and from the other pocket a sock with bags of the same substance. The notebook in the locker had the name The Student written on it.

Officer took the sweatshirt, plastic bags, and notebook to his office. His field test of the substance in the plastic bags showed THC, indicating marijuana.

Later that afternoon The Student reported that someone broke into his locker on February 1, 2012, and that his sweatshirt and notebook were gone at the time of sixth period. PX 103. On February 2, 2012, Officer arrested The Student at school. The Student asked why he was being arrested.

DCPS did not have a conference with The Student, although Mr. telephoned his mother to explain what happened.

VI. Conclusions of Law and Appropriateness of Proposed Disciplinary Action

The Student, through counsel, argues that this matter should be dismissed because DCPS failed to follow its own regulations. Specifically, DCPS did not follow 5 DCMR B2505.3, which provides that “[a]ny student who is to be suspended or expelled shall be given a conference with the school official responsible for proposing the disciplinary action, prior to the Suspension or Expulsion.” Mr. did not offer the student a conference as required because of the related criminal proceeding. With notice to the student’s parent and student’s attorney, The Student had the requisite notice and opportunity to be heard underlying 5 DCMR B2505.3 and required by due process as set out in section IV above. Hence, on the record before me, the failure to adhere to 5 DCMR B2505.3 does not support dismissal. Therefore, I deny the student’s motion to dismiss, and turn now to the merits of this charge.

The Notice of Proposed Disciplinary Action charged the student with “possession of drug paraphernalia or controlled substance,” which is a Tier V infraction under DCPS’s regulations.

5 DCMR B2502.5(a)(5). Based on the established facts in this case, I find that the student committed the infraction charged. For Tier V infractions, the regulations provide for the following possible disciplinary responses: off-site Long-Term Suspension or Expulsion. 5 DCMR B2502.5(b).

Officer testimony convinced me that The Student possessed marijuana on February 1, 2012. He watched Mr. open the locker 542, saw the bags taken from the sweatshirt pockets, and later tested the substance that was positive for marijuana. It is undisputed that the locker was The Student. His report that his locker had been broken into occurred hours after the police officer removed its contents and before The Student learned he had been charged. The record lacks evidence to show that anyone other than The Student had access to the locker before the officer removed the contents.

DCPS recommended a disciplinary response of Long-Term Suspension of 83 days. The regulations provide that disciplinary responses should be “logical, appropriate, and instructive.” 5 DCMR B2500.9. In making a recommendation, I have considered the nature of the infraction, the safety of other students, and the student’s previous behavioral history. *Id.* Specifically, I have considered that arriving at school with marijuana is an offense that could have involved other students had the bags not been confiscated. Yet, because The Student has not had other problems at the school, I find the proposed disciplinary action excessive and I recommend that DCPS modify the proposed disciplinary action. In modifying the disciplinary action, I recommend that DCPS reduce the long-term suspension to 60 days.

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 recommendation.

Date: February 16, 2012

Margaret A. Mangan
Administrative Law Judge