

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, N.W.
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-9451

In RE: THE STUDENT

Name of School Attending: BALLOU HIGH
SCHOOL

STUDENT DISCIPLINE
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

Date of Incident: February 9, 2012

Date of Hearing: February 22, 2012 Time: 9:15 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).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 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.

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

On February 9, 2012, DCPS provided the parent with a written notice of recommended disciplinary action. On February 17, 2012, DCPS notified the parent by first class mail and by telephone that a hearing was scheduled at OAH on February 22, 2012, at 11:15 a.m.

The parent and the student appeared for the hearing² and were given the opportunity to present evidence and cross-examine DCPS's witnesses. , Dean of Students, testified for DCPS. The Student and her mother, testified and the grandmother, , made a statement for the record. Accordingly, due process procedures have been properly followed.

V. Findings of Fact

The Student is a 17 year old twelfth grade student at Ballou High School. On February 9, 2012, The Student was in the cafeteria around 8:20 a.m. getting breakfast with her young daughter. As The Student headed out the cafeteria door to take her daughter to day care, with her daughter walking beside her, a much larger and heavier male student came into the cafeteria, walked into her daughter and knocked her down. The little girl started crying. The male student continued walking by, did not help pick up the girl and did not apologize for knocking her down. The Student picked the little girl up and turned to the male student, saying something to the effect of "well, excuse you." The male student responded "okay, whatever" and again did not apologize. The Student picked up a carton of milk and threw it towards the male student, missing him. The Student placed her daughter by the security guard at the door, and then confronted the male student. They began arguing, and the male student pushed her. The Student

² DCPS also charged The Student's sister, the Sister, with a Tier V infraction involving the same incident and scheduled the Sister's hearing for 9:15 a.m. on February 22, 2011. The Student appeared at 9:15 with the Sister, and since their cases involved common questions of fact, with the parties' consent, I consolidated them for the hearing. OAH Rule 2820.

responded, and they began to fight. DCPS Exhibit 103. When a friend pointed out to the Sister that her sister the Student, was involved in a fight, the Sister and the friend rushed over to help The Student.

Dean of Students office is near the cafeteria entrance. When he heard the commotion, Mr. entered the cafeteria and saw the male student pulling The Student's hair. Mr. restrained the male student and removed him to the office.

Although there was a security guard at the cafeteria door and behavior techs in the cafeteria, they did not move to break up the fight promptly. They eventually restrained the female students. Mr. reviewed the security camera videos and could see the initial interaction between The Student and the male student at the door, and could see the Sister and her friend running to join the fight, but could not see the rest of the incident.

There was no evidence that anyone sustained injuries. The Student has had two previous instances of being involved in fights at Ballou. For this incident, she has been suspended and out of school since February 9, 2012. There have been repeated delays in The Student's mother being able to get the educational packets, as they have not been in the school office when promised.

VI. Conclusions of Law and Appropriateness of Proposed Disciplinary Action

The Notice of Proposed Disciplinary Action charged the student with a Tier V infraction, "Participating in a group fight which has been planned, caused major disruption to the school day, or results in substantial bodily injury." 5 DCMR B2502.5(a)(11). 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, there was no evidence that the fight was planned or that it caused bodily injury; however, the fight did involve four or five students. Mr. testified that this is considered a major disruption to the school day as when situations like this erupt, the cafeteria has to go into “lock down” until things settle down. There is nothing in the record to indicate, however, that this situation lasted for more than a few minutes, and that the students in the cafeteria were unduly delayed in getting to their classes. Based upon these facts, I conclude that the fight did not cause a major disruption to the school day. Accordingly, I conclude that The Student did not commit the infraction charged. 5 DCMR B2502.5(a)(11). Rather, I find that the infraction established is a Tier IV infraction “Fighting which creates substantial risk of or results in minor injury.” 5 DCMR B2502.4(a)(9).

The disciplinary responses for Tier IV infractions include off-site Short-Term, Medium-Term or Long-Term suspension. 5 DCMR B2502.4. In this case, DCPS proposed an off-site Long-Term Suspension for 90 days. The regulations provide that disciplinary responses should be “logical, appropriate, and instructive.” 5 DCMR 2500.9. Mr. contended that a long suspension is appropriate in this case because this is The Student’s third instance of fighting,

although he acknowledged that the first incident involved her daughter's father, and that The Student was defending herself against an attack and was not at all responsible. The second incident involved a former friend, who allegedly precipitated that incident. Nevertheless, I find that the proposed discipline is excessive, and I recommend that DCPS modify the discipline to Tier IV: Long-Term Suspension of 20 days, instead of the 90-day suspension proposed. I further recommend that the time The Student has already been out of school be credited toward this suspension.

In making this recommendation, I have considered the following factors: circumstances related to the infraction; the student's previous behavioral history; whether serious or substantial bodily injury occurred; whether a weapon was involved; the safety of other students and staff; the educational needs of the student to be disciplined, and extenuating circumstances. DCMR 2500.9. Specifically, I have considered that the fight was impromptu and precipitated by the male student knocking her daughter to the ground, there were no weapons involved, and there was no evidence of any injuries. Further, it is clear that The Student's motherly instincts took over when a larger and heavier male student walked into and knocked over her daughter as he entered and she attempted to leave the cafeteria. The Student acknowledged that she reacted out of character when she went after the male student, but seeing her daughter on the ground and crying blinded her to what she knew to be a more appropriate response. I have also considered that The Student was remorseful. And although she has a history of being involved in similar behavior at the school, I credit her testimony that she did not initiate any of the incidents.

The Student's mother, testified about the difficulties she has had getting the educational packets for The Student and that even when school work was turned in, The Student did not get credit for the work, resulting in failing grades. Mrs. also noted that she has been getting calls

about The Student's alleged truancy, as her teachers apparently do not know that The Student has been suspended since February 9, 2012. Mrs. strongly disapproved of placement at Choice Academy for The Student. Given the academic delays that have occurred in getting educational packets timely and The Student's clearly expressed remorse, suspending her until the end of the school year when she is scheduled to graduate at the end of this semester is not justified.

The 10 days suspension already served, along with an additional 10 days, should be long enough to communicate the seriousness of the infraction and help The Student remember that she could have reported the incident to Mr. rather than responding herself. It will also allow The Student to return to her regular classroom in time to finish out the semester, consistent with her educational needs.

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 23, 2012

Beverly Sherman Nash
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).

Clerk / Deputy Clerk / Paralegal