

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

Name of School Attending:
ANACOSTIA HIGH SCHOOL

STUDENT DISCIPLINE
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

Date of Incident: January 13, 2012

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

Proposed Disciplinary Action: Long-Term Suspension of 45 days
 Expulsion

Parties at Hearing:

II. Recommendation of Administrative Law Judge

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. Pursuant to the MOU with DCPS, OAH will conduct student disciplinary hearings and issue findings of fact and conclusions of law. 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, DCPS shall provide the parent with written notice of the recommended disciplinary action that sets forth the reasons for the discipline no later than one (1) school day after the decision by the principal, or a person designated by the Chancellor, to authorize or propose suspension. 5 DCMR B2505.6(b). A student who has been suspended for 11 days or more shall have a disciplinary hearing before an impartial hearing officer not more than four (4) school days after a

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

written notice regarding disciplinary action is provided to the parent or guardian. 5 DCMR B2506.2. These due process procedures were not properly followed in this case.

On January 23, 2012, which was ten calendar days after the incident, DCPS provided the parent with a written notice of the proposed disciplinary action. On February 7, 2012, DCPS notified the parent by first-class mail, and the student's attorney by email, that a hearing was scheduled at OAH on February 15, 2012, which was more than four school days after DCPS provided written notice. 5 DCMR B2506.2. In addition, the hearing was scheduled over a month after the January 13, 2012 incident. According to the Workflow Status History, DCPS did not begin the workflow process until January 23, 2012.

The Student is a student with a disability. A student with a disability, who is suspended for 11 or more days, must have a meeting to determine whether the student's behavior was a manifestation of his or her disability. 5 DCMR B2510. According to the Dean of Students and the student's attorney, on January 23, 2012, DCPS held a manifestation determination meeting, which the parent attended. DCPS determined that the student's behavior was not a manifestation of the student's disability. Therefore, DCPS may discipline the student in the same manner as non-disabled students. 5 DCMR B2510.4.

The parent and the student's attorney appeared for the hearing and were given the opportunity to present evidence and cross-examine DCPS's witnesses. The student did not appear. The following witnesses testified on behalf of DCPS:,. The following witness testified on behalf of the student:.

V. Findings of Fact

The Student is a seventeen year old student with a disability, and he is in the eleventh grade at Anacostia High School. DCPS alleged that on January 13, 2012, The Student engaged in lewd or indecent public behavior or sexual misconduct, which is a Tier IV behavior. A girl and two boys were allegedly involved in the incident in question. However, DCPS offered no evidence that The Student engaged in lewd or indecent public behavior, or sexual misconduct. DCPS did not provide the name or statement of the girl, or statements from The Student or the other student involved in the incident. The only statement in the record is the statement prepared by.

Dean of Students testified that MPD Police Officer saw The Student, another student, and a female student walking from under the bleachers. Officer contacted Dean and asked him to come to the bleachers to retrieve the students, who were not authorized to be in that area. DCPS did not call Officer as a witness, and DCPS did not provide a statement from Officer.

After receiving the call from Officer, Dean walked the girl and two boys back into the school, and he directed all three students to be screened by security. The Student had tobacco products and a lighter. After finding these items in The Student's possession, Dean asked the other student to unbutton his coat. The other student had blood around the crotch area of his pants. The Student lifted his shirt, but there was no blood found on him. Exhibit 102.

After seeing blood on the other student's pants, Dean asked the unidentified girl: "[D]id any inappropriate behavior take place under the bleachers." *Id.* According to Dean statement, the girl stated, "yes but I told them I was on my period." *Id.* Dean replied, "so something did happen[,] and the female student said yes but only for a little while." *Id.* Dean asked Dr., the

social worker to speak with the female student. There is no statement in the record from Dr., and Dr. was not called as a witness.

VI. Conclusions of Law and Appropriateness of Proposed Disciplinary Action

The Notice of Proposed Disciplinary Action charged The Student with lewd or indecent public behavior or sexual misconduct, which is a Tier IV violation under DCPS's regulations. 5 DCMR B2502.4(a)(6). Based on the established facts in this case, I find that DCPS has failed to meet its burden of proving that The Student engaged in this violation.

It is the burden of DCPS to show by a *preponderance of the evidence* that the student committed the infraction upon which the disciplinary action is based. 5 DCMR B2506.7. 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.

There was no evidence that The Student engaged in sexual misconduct, lewd or indecent public behavior with anyone on January 13, 2012. Moreover, there was no blood or other circumstantial evidence to suggest that anyone other than the other student and the girl engaged in lewd, indecent, or sexual misconduct.

In this case, DCPS recommended a disciplinary response of long-term suspension based on the student's alleged Tier IV conduct. Because I find that no violation occurred, I recommend that disciplinary action is not warranted. And, pursuant to 5 DCMR B2507.6, I recommend that DCPS destroy all school records regarding the disciplinary action, including any reports that relate to the incident upon which the disciplinary action was proposed, insofar as those reports individually identify the student.

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

Jennifer M. Long
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