

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

Name of School Attending:
DUNBAR HIGH SCHOOL

Case No.:
Student ID No.:

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

I. Introduction

Date of Incident: February 13, 2012

Date of Hearing: February 22, 2012 Time: 11:15 a.m.

Proposed Disciplinary Action: Long Term Suspension of 32 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. 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, 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

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

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 13, 2012, DCPS provided the parent with a written notice of the proposed disciplinary action. On February 15, 2012, DCPS notified the parent by first-class mail that a hearing was scheduled at OAH on February 22, 2012, at 11:15 a.m.

The parent and the student appeared for the hearing and were given the opportunity to present evidence and cross-examine DCPS's witnesses. The following witness testified on behalf of DCPS: [REDACTED]. The student chose not to testify, and the student did not present any witnesses. Accordingly, due process procedures have been properly followed.

V. Findings of Fact

THE STUDENT is a tenth grade student at Dunbar High School. On February 13, 2012, she entered Dunbar and placed her bag on the weapon abatement machine. Officer [REDACTED], who was operating the machine, saw a pocket knife in THE STUDENT's bag. The knife, which had a 3½ blade, was wrapped in a shirt. Officer [REDACTED] contacted the Assistant Principal, [REDACTED]. Mr. [REDACTED] took THE STUDENT to his office. THE STUDENT explained that she had the knife for protection because a group of girls tried to jump her in Anacostia, where she lives. However, she did not realize that she left the knife in the bag, and she did not intend to take the knife into the school.

Mr. Thompson telephoned THE STUDENT's mother, [REDACTED]. Ms. [REDACTED] stated that she was aware that her daughter carried the knife for protection. Ms. [REDACTED] explained that

THE STUDENT lives in a dangerous section of Anacostia, and she felt her daughter needed to protect herself from the girls in her neighborhood. After speaking to Mr. [REDACTED], who explained the severity of the disciplinary infraction, she indicated that she was keenly aware of the error in her thinking.

During the hearing, THE STUDENT and her mother acknowledged that THE STUDENT should not carry a weapon, and they each displayed remorse. Moreover, they did not attempt to justify or defend THE STUDENT's action, and they stated that they were prepared to accept whatever disciplinary action that the school felt was appropriate.

VI. Conclusions of Law and Appropriateness of Proposed Disciplinary Action

The Notice of Proposed Disciplinary action charged the student with "Possession of a weapon or replica or imitation of a weapon (including water guns), other than weapons subject to the requirements of the Gun-Free Schools Act," which is a Tier IV infraction under DCPS's regulations. 5 DCMR B2502.4(a)(13). Based on the established facts in this case, I find that the student has committed the infraction charged. 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 for 32 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 following factors: the circumstances relating to the infraction; the student's previous behavioral history; the safety of other students and staff; the educational needs of the student to be disciplined; and the extenuating circumstances surrounding the infraction. 5 DCMR B2500.9.

In order to evaluate these factors, I asked the Assistant Principal to explain why the school recommended a 32 day suspension. He candidly described the severity of the infraction, and explained that the recommendation was consistent with other suspensions for similar conduct at Dunbar. While I agree and commend Dunbar for the manner in which the school handled this matter, I believe that there are extenuating factors in this case that warrant a shorter suspension.

First, THE STUDENT's mother counseled her to carry the knife for protection from the dangers that she faced in Anacostia. Ms. [REDACTED] indicated that she enrolled THE STUDENT in Dunbar in order to avoid the perils of her neighborhood. When confronted with the error of her counsel, both THE STUDENT and her mother acknowledged that carrying a weapon was wrong. They did not attempt to justify the behavior or offer anything more than a factual explanation of why THE STUDENT carried the knife. They came to the hearing prepared to accept whatever discipline the school imposed because they recognized the seriousness of this matter. THE STUDENT also showed remorse and appreciated the seriousness of her conduct.

I asked THE STUDENT about her long term goals, and she indicated that she aspired to be an attorney. She understood how inconsistent her conduct was with her chosen vocation, and she agreed to take steps to show that she is serious about becoming a lawyer. She agreed to enroll in Street Law next school year, and her mother and Mr. [REDACTED] agreed to ensure that she has access to this class. She also agreed to write an essay on why she wants to be an attorney.

Finally, I considered THE STUDENT's educational needs. She was suspended on February 13, 2012. When she appeared for the hearing on February 22, 2012, I learned that she

had not received an Educational Plan. Ms. [REDACTED] indicated that she contacted the school during the suspension; however, she was not able to secure assignments for her daughter. During the hearing, Mr. [REDACTED] indicated that the plan was prepared, and he assured her that the plan would be provided on February 22, 2012. However, THE STUDENT has received no educational tools for close to ten days. This lack of instruction coupled with the 32 day suspension, will adversely impact her educational needs.

I find that the proposed disciplinary action is not appropriate in light of the extenuating circumstances in this case, the student's remorse and acceptance of responsibility, and the absence of educational tools from February 13-22, 2012. Therefore, I recommend that DCPS modify the proposed disciplinary action. In modifying the disciplinary action, I recommend that DCPS impose the following alternative discipline: Off-site Medium-Term Suspension of 10 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 23, 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