

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**
One Judiciary Square
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In RE: R.J., JR.

Name of School Attending: COLUMBIA
HEIGHTS EDUCATION CAMPUS

Case No.: 2011-DCPS-00013

Student ID No.: xxxxxxxx

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

I. Introduction

Date of Incident: December 9, 2011

Date of Hearing: January 5, 2012 Time: 9:15 a.m.

Proposed Disciplinary Action: Long Term Suspension of 21 days
 Expulsion

Parties at Hearing:

<input checked="" type="checkbox"/> Student	<input checked="" type="checkbox"/> School Representative: Kiah Campbell
<input checked="" type="checkbox"/> Parent/Guardian: R.J., Sr.	<input checked="" type="checkbox"/> Other: M.J., Aunt
<input type="checkbox"/> Parent/Guardian:	<input type="checkbox"/> Other:
<input type="checkbox"/> Attorney/Representative:	<input type="checkbox"/> Other:

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. On December 22, 2011, DCPS provided the parent with a written notice of recommended disciplinary action that set forth the reasons for the discipline. On December 22, 2011, DCPS notified the parent by first class mail and by telephone that a hearing was scheduled at OAH on January 5, 2012 at 9:15 a.m.

¹ 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 following witness testified on behalf of DCPS: Kiah Campbell, Dean of Students. R.J., Sr., the student's parent, and the student testified on his behalf. DCPS introduced 15 exhibits, which were admitted into evidence. Accordingly, due process procedures have been properly followed.

Because there are factual disputes as to the student's participation in the events of December 9, 2011, I will first set forth my actual findings of fact, and then discuss my analysis of the evidence.

V. Findings of Fact

A. Specific Findings

R.J., Jr., ("R.J.") is an 11 year old student in the sixth grade at Columbia Heights Education Campus (the "school").

1. The School Investigation

On December 9, 2011, at approximately 8:30 a.m., Assistant Principal Amanda Delabar, was in a meeting at the school when she heard commotion coming from the hallway. When Ms. Delabar entered the hallway, students were dispersing. Exhibits ("Exh.") 102 and 108.

Immediately following the incident, Ms. Delabar reviewed the video surveillance tape to determine what had occurred. The surveillance video showed a fight in which 7th grade students B.F. and C.V. were chasing a 6th grader, E.A. *Id.* The video showed that R.J. was present in the hallway, running back and forth, looking out.

In interviewing numerous students about the incident, Assistant Principal Delabar learned that R.J. had created or assisted in creating “territories” within the school. There was a sixth grade territory located in the school hallway and a seventh grade territory. The territories had the effect of creating a rivalry between sixth and seventh grade students. Seventh grade students were not permitted to enter the sixth grade territory without repercussions.

The day after the incident, Dean of Students Kiah Campbell interviewed R.J. and fourteen students involved in the fight. Exh. 109-114. Ms. Campbell was not present at school on the day of the incident, but she did review the surveillance video.

On December 12, 2011, Ms. Campbell met with R.J. and his father concerning the incident. Mr. J. provided a new statement about the incident signed by R.J. Exh. 103. Mr. Morales, a counselor, attended the meeting because Ms. Campbell believed R.J. and his family would benefit from counseling services. Mr. J. requested to view the surveillance videotape of the incident. Before the security officer could appear in Ms. Campbell’s office with the videotape, Mr. J. had terminated the meeting and left the school.

Based on the investigation, DCPS charged that R.J. had committed a Tier 5 violation – Participating in group fight which has been planned, causes major disruption to school day or results in substantial bodily injury. Exh. 100. DCPS sought a 21-day long-term school suspension, which was imposed immediately. As of the hearing date, R.J. had already served ten days of the requested suspension.

2. The Incident on December 9, 2011

Prior to December 9, 2011, R.J. had participated in a territorial dispute involving the 6th and 7th grades. R.J. and his friend T.J. created a 6th grade territory through which 7th graders were not permitted to pass. This territorial dispute formed the background for the events on December 9, 2011.

On December 9, 2011, shortly before 8:30 AM, R.J., his friend T.J., and other students were gathered in the hallway. A fight broke out between 6th grade and 7th grade students over whether the 7th graders were permitted to be in that hallway. R.J. did not start the fighting.

During the incident, R.J. participated as a look-out. R.J. also said to 7th grader C.V. that he was on R.J.'s territory. C.V. said, "What are you talking about?" R.J. then shoved him, and the two students got into a fight. Exh. 112.

There were 15 students involved in the incident overall. One student, 6th grader E.A., suffered minor injuries when he was punched. R.J. was not the student who punched him.

The fight did not cause a major disruption to the school day, nor did it result in substantial bodily injury. The fight was not planned.

3. R.J.'s Prior Disciplinary Record

R.J. has one prior school suspension. In October 2011, he was charged with a Tier 5 violation for allegedly taunting students from other schools with racial slurs and sexual slurs. At his disciplinary hearing, the suspension was reduced to the time served.

B. Discussion of Evidence

In this case, there are factual disputes about the extent of R.J.'s involvement in the December 9, 2011 incident. In fact, R.J. himself has given contradictory statements on this matter.

The record requires me to resolve numerous conflicting accounts, most of which are hearsay accounts. Although hearsay is admissible in administrative hearings, hearsay evidence is not the kind of "substantial evidence" on which this court can base its resolution of directly conflicting testimony. *See Jadallah v. D.C. Dep't of Emp't Servs.*, 476 A.2d 671, 676-77 (D.C. 1985) ("It is one thing to hold that hearsay evidence is admissible in agency hearings, but quite another to say that the direct sworn testimony of a witness on a crucial fact can be effectively refuted by hearsay, *i.e.*, the statements of persons not produced as witnesses – and hence not subject to cross-examination – when the party relying on such statements is in a position to call the declarants to the stand."). In deciding on conflicting evidence, the District of Columbia Court of Appeals has warned that without extrinsic corroboration, hearsay statements must be scrutinized carefully when challenged by sworn testimony of a witness. *V.K. v. Child and Family Services Agency of D.C.*, 14 A.3d 628, 634 (D.C. 2011); *James v. Dep't of Employment Servs.*, 632 A.2d 395, 398 (D.C. 1993). The Court of Appeals has repeatedly emphasized that when the party relying on hearsay statements is in a position to call the declarants to the stand, the practice of relying exclusively on hearsay should be heavily weighted against the sponsoring party. *V.K.*, 14 A.3d at 634.

At the hearing, DCPS provided two statements by R.J., Exh. 103 and 109, five statements by other students involved in the incident, Exh. 110-114, and two statements by Assistant

Principal Delabar. In addition, Ms. Campbell testified about her own investigation and her contacts with R.J. and his father.

R.J. testified that he arrived after the fight had started. He admitted to being involved in some fighting, but not to playing a major role in it. He admitted that there was a 6th grade versus 7th grade rivalry, but said this stemmed from a series of football games played between students in the two grades.

This account is not consistent with either of his earlier statements. In the initial statement, Exh. 109, R.J. said that he and T.J. were walking down the hallway when a student named "M." said that 7th grade is better than 6th grade and then pushed R.J., starting the fight. In his second statement, provided at the meeting on December 12, 2011, Exh. 103, R.J. said that he and M. were playing in the hallway, when T.J. defended R.J. by pushing M. R.J. then said, "Let's have a game like our football games, but in school." R.J. said they began horsing around, but the game went too far.

The hearsay statements of the other students often contradicted R.J.'s accounts, while they also contradicted each other.

T.J., Exh. 110, stated that R.J. started the "floor thing" and that the 6th graders jumped in to say that the 7th graders could not be on their floor. The 6th graders started pushing the 7th graders, who pushed back.

Sixth grader E.C., Exh. 111, said he was walking by when he started a fight with 7th grader E.C.V. This statement does not mention any involvement by R.J.

Seventh grader C.V., Exh. 112, reported that R.J. challenged him that he was on R.J.'s territory and then shoved him.

Sixth grader E.A., Exh. 113, said that C.C. punched him and that B.F. and C.V. chased him. This statement does not mention any involvement by R.J.

T.N., Exh. 114, said that he saw a lot of boys piled up on E.A. This statement does not mention any involvement by R.J.

The surveillance video, which was not offered into evidence, purportedly showed R.J. running back and forth and looking out, but did not show him hitting anyone.

Based on this evidence, it is not clear whether R.J. started the fight. Some accounts support this finding, and some accounts do not. I do not find on this evidence that R.J. started the fight.

However, the preponderance of the evidence shows that R.J. was involved in creating territories between the 6th and 7th grades, and that he instigated fights with 7th graders who encroached on his territory. Further, R.J. admits that he participated in the fighting after it had started.

Therefore, I have found that R.J.: (1) participated in creating the territorial dispute between the 6th and 7th graders; and (2) participated in the group fighting.

At the same time, the record does not show that this group fighting was planned. It appears to be an accidental conflict that escalated. I do not find that the group fighting caused a

major disruption to the school day, or that it resulted in substantial bodily injury. One student incurred minor injuries. The incident lasted a short period of time.

VI. Conclusions of Law and Appropriateness of Proposed Disciplinary Action

Based on the established facts in this case, I find that the student committed the infractions of “fighting which creates substantial risk of or results in minor injury,” and “inciting others to violence or disruption.” Both infractions are Tier IV infractions under DCPS’s regulations. 5 DCMR B2502.4(a)(9) and (a)(10). For Tier IV infractions, the disciplinary responses range from Short-Term Suspension to Medium-Term Suspensions to Long-Term Suspension. 5 DCMR B2502.4(b).

In this case, DCPS alleged that the student committed the Tier V infraction of “Participating in a group fight which has been planned, caused major disruption to school day or results in substantial bodily injury.” 5 DCMR B2502.5(a)(11). However, I conclude that DCPS has failed to meet its burden of proving by a *preponderance of the evidence* that the student planned the fight or that the fight caused a major disruption to school day or resulted in substantial bodily injury. 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.

DCPS recommended a disciplinary response of Long-Term Suspension, which is a disciplinary response available for Tier IV and Tier V infractions. The regulations provide that disciplinary responses should be “logical, appropriate, and instructive.” 5 DCMR 2500.9. Because I find that the student’s behavior amounted to a Tier IV infraction, and based on his level of participation in the incident in question, I recommend that DCPS modify the proposed discipline. In modifying the discipline, I recommend that DCPS impose the following Tier IV disciplinary response: **off-site medium-term suspension of 10 days.**

In making a recommendation, I have considered the following factors: circumstances relating to the infraction; the age of the student; whether injury occurred; the safety of other students and staff; the educational needs of other students; the educational needs of the student to be disciplined. 5 DCMR 2500.9.

Specifically, I have considered that creating and enforcing territories with the school is analogous to gang behavior and inherently creates an on-going dangerous situation within a school and is disruptive to the educational needs of all students. I have considered that this student has one prior disciplinary suspension, and that he participated in creating the territories as well as participated in the fighting.

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: January 5, 2012

Paul B. Handy
Administrative Law Judge

