THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	
Employee	)	OEA Matter No. 1601-0057-24
	)	
v.	)	Date of Issuance: March 31, 2026
	)	
D.C. PUBLIC SCHOOLS,	)	Michelle R. Harris, Esq.
Agency.	)	Senior Administrative Judge
	)	
	)	

Yaida O. Ford, Esq., Employee Representative
Angel Cox, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 20, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Public Schools' ("DCPS" or "Agency") decision to terminate him from service effective May 20, 2024. Following a request from OEA dated June 21, 2024, Agency filed its Answer on July 30, 2024. Agency also filed a Statement regarding the late filing of its Answer. This matter was assigned to the undersigned on July 23, 2024. On August 8, 2024, I issued an Order Convening a Prehearing Conference in this matter for September 4, 2024. On August 26, 2024, Employee's representative filed a notice of Designation of Representation in this matter. That same day, Employee, by and through his counsel, filed a Consent Motion to Continue to Prehearing Conference and Extend Deadlines. It was requested that the Prehearing Conference be extended for 45 days and that the deadline for Prehearing Statements be extended to September 28, 2024. Employee's representative cited therein that she had recently been retained in this matter and needed additional time to prepare.[2] I issued an Order on August 27, 2024, granting Employee's Motion, with the Prehearing Conference rescheduled to October 9, 2024, and Prehearing Statements now due by or before October 1, 2024.

Both parties appeared for the Prehearing Conference on October 9, 2024, as required. During that conference, the parties indicated that discovery had not yet been completed and as a result, on October 9, 2024, I issued a Post Prehearing Conference Order requiring discovery to be completed by

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency consented to this request.

or before November 12, 2024, and Amended Prehearing Statements by or before November 18, 2024. Additionally, that Order scheduled a Status/Prehearing Conference for November 26, 2024, and the parties appeared on November 26, 2024, as directed. During that time, it was determined that there was still outstanding discovery between the parties. The undersigned advised the parties to file Motions for the undersigned to address any pending discovery issues. Thereafter, I issued a Post Prehearing Conference Order wherein, I scheduled a Status Conference for December 12, 2024. Agency filed a Consent Motion for a Continuance of Time on December 10, 2024. The parties citied to remaining issues regarding the completion of discovery, due to technical errors in the receipt of documents. Further, Agency requested that the Status Conference be continued until January 3, 2025, because DCPS was entering winter break, and it needed more time to contact school-based employees to complete the discovery.

On December 12, 2024, I issued an Order granting the Motion for Continuance. That Order required that discovery be complete by or before January 17, 2025, and scheduled a Status Conference for January 23, 2025. Both parties appeared as required on January 23, 2025. During that time, the undersigned determined that an Evidentiary Hearing was warranted in this matter. On January 23, 2025, I issued an Order which scheduled a virtual Evidentiary Hearing for Thursday, March 20, 2025. An Evidentiary Hearing was held over three (3) days in this matter, including March 20, 2025, April 10, 2025, and May 13, 2025.

During the Evidentiary Hearing, both parties presented testimonial and documentary evidence. Following the Evidentiary Hearing and the receipt of the transcript in this matter, I issued an Order on May 28, 2025, requiring both parties to submit their written closing arguments on or before July 14, 2025. On June 20, 2025, Employee filed a Consent Motion to Extend the Deadline for closing arguments. Employee's counsel cited therein that unexpected schedule conflicts regarding a jury trial precluded the submission by the deadline. Agency consented to this request. On June 24, 2025, I issued an Order granting the Motion. The parties were required to submit their written closing arguments by or before August 15, 2025. The parties have submitted their closing arguments. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency had cause to take adverse action against Employee; and
2. Whether Agency followed all applicable rules, and regulations in its administration of the adverse action; and
3. If so, whether termination was the appropriate penalty under the circumstances.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[3]

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

SUMMARY OF TESTIMONY

On March 20, 2025, April 10, 2025, and May 13, 2025, an Evidentiary Hearing was held before this Office.[4] The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. Both Employee and Agency presented testimonial and documentary evidence during the Evidentiary Hearing to support their positions.

Agency's Case-In-Chief

Dion Senn ("Senn") Tr. Vol. 1. Pp 18 – 123

Senn is currently a special police officer at the capital Hilton Hotel and has been in that role for almost a year. He testified that he is an alumnus of Coolidge High School and was a volunteer coach for the football team. Tr. 20. He began as a volunteer coach around March or April of 2023. He explained that he was a volunteer coach until the incident occurred with Employee and he was told to stay away until the investigation was over. Tr. 21. He cited that one of his old coworkers told him about volunteer coaching at the high school. He cited that "Coach Kevin" was the head coach of the football team. Tr. 22. Senn testified that he was referred to as "Coach Smurf" while there. Tr. 22. He cited that as a volunteer, he worked as a running back coach, and he would show the members how to prepare for games. He also noted that he played football in high school. Tr. 22. Senn further explained that when he joined the football staff, he was at the high school every day, Monday through Fridays. Tr. 22. He also explained that when Coach Kevin scheduled practice for Saturdays, Coach Kevin would communicate that to him and if he wasn't working, he would go to the school on Saturdays as well. Tr. 23.

Senn testified that when he came to the school, he would enter the tunnel if it were open. Otherwise, he would walk around and enter through "Door 16." Tr. 23. He explained that the tunnel was the football tunnel that leads out to the football field from where the coaches' lounge is located. Tr. 23. He also explained that Door 16 is by the parking lot closest to the Frank R. Williams Center, which he referred to as the "big gym." Tr. 24. Senn testified that while at Coolidge, he worked with other coaches including Employee, Maurice Woody, Mike Harley and the entire coaching staff. Tr. 25. He stated that Employee's nickname was "Coach H""[5] Tr. 26. He first met Employee a few weeks after he started working at the high school. He testified that his relationship with Employee was "we would speak, handshake each other..." etc. Tr. 26.

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[3] OEA Rule § 699.1.
[4] Vol. 1 denotes the first day of the Evidentiary Hearing, Vol. 2 represents the second day, and Vol 3 represents the third day of the Evidentiary hearing in this matter.
[5] Name has been abbreviated and will be referred to as "Coach H" to reflect Employee's coaching nickname for the purposes of this decision.

Senn noted that prior to the April 2024 incident, he did not have any issues with Employee. Tr. 27. He noted that at one time, Employee told him he had lost his wallet and asked Senn for $30 stating that he would pay him back. Senn cited that he never received that money back. Tr. 28. Senn recalled that this happened around June. Tr. 29. Senn testified that he asked Employee about the money and Employee said he would not pay it back. He asserted that Employee also owed someone else money. Tr. 30. Senn explained that he did not have any ill will toward Employee and that their interactions after that were "fine". Tr. 31. They also went to camp and worked together while there.

Senn testified that in April of 2024, he and Employee had an altercation. He explained that Coach Kevin had called and asked him to help with the girls' flag football team, specifically to ride on the bus. Tr. 32. Senn explained that when he arrived, Coach Kevin was distributing jerseys to the girls' team. He asked Coach Kevin if he could get a soda and chips from the teacher's lounge to which Coach Kevin agreed. Tr. 33. Senn cited that he asked a student to show/take him to the teacher's lounge. Senn said he encountered Employee and he heard Employee say "Hey Smurf, he can't go into the teacher's lounge" – referring to the student who was with Senn. Tr. 33. Senn stated that he responded to Employee and said the student was only showing him where the lounge was. He then went inside the lounge. He got items for himself and a honey bun for the student. Tr. 34. Senn explained that he found his way back to the atrium and sat down as the flag football team was getting ready. Tr. 34. Senn cited that he was eating his snack when Employee approached him and said, "I know you're alumni, you got your Coolidge stuff on, but you don't walk in the building like you own it…" Tr. 35. Senn said he replied to Employee that "nah you're talking to me like that" and that Employee turned and said, "lets step downstairs." Tr. 35. Senn said they walked to the elevator and Employee stated that people think he's a sucker, but he's not scared. Tr. 35. Senn asserted that once downstairs, he said that Employee took off his jacket and walked out the door first. Senn explained that he walked out with his hands in his pocket, with his soda in his right hand. Tr. 36. Senn said that he saw Employee pull out a knife and Employee said, "I poke niggas like you." Employee hit Senn in the face twice and then they started "tussling." Tr. 36. Senn explained that some people came and broke them up, but the knife had hit him on his forearm. Senn testified that he didn't know he was bleeding until he got back in the building. Tr. 36.

Senn testified that on the day of the incident, he entered through Door 16. Tr. 38. He said the security guard (female) opened the door and he went downstairs to the coach's football locker room. Tr. 38. Senn explained that his conversation with Coach Kevin prior to going to the lounge to get snacks took place in the atrium. Tr. 40. He reiterated that Employee was the person who told him that students weren't allowed in the teacher's lounge. Tr. 41. Senn asserted that the student did not enter the teacher's lounge with him. He also explained he got a Cherry Coke which was in a plastic bottle, a bag of Cheetos and a honey bun in the lounge. Tr. 42. Senn cited that Employee has a loud deep voice, but when he spoke to him it came across aggressive which is why he responded, "who you talking to." Tr. 42. Senn said his own tone of voice in responding to Employee was with a "little smirk." Tr. 43. He cited that his tone was normal, and that he was just minding his business. Tr. 44. Senn further explained when he and Employee left the atrium, they both went to the elevator. While they were waiting for the elevator Senn cites that Employee was going "back and forth." Tr. 45. Senn believed that they were going downstairs to talk.

Senn testified that Employee did not make any threats while they were waiting for the elevator. Tr. 46. Senn reiterated that Employee went outside first. Tr. 47. Senn explained that Employee pulled out a knife and when Employee said he "pokes niggas like you" that he took that to mean stab. Senn said after that Employee punched him in the face twice and they grabbed each other. Tr. 48. Senn cited that he did not strike Employee but grabbed his shirt close to the collar and they

were tussling. Tr. 48-49. Senn also testified that Employee had told him he was going to "smoke him" and that Senn felt that meant Employee was going to kill him. Tr. 49. [Agency Exhibit 1 - VIDEO - was played.]

While reviewing the video, Senn identified Employee and stated at the 15:47:22 mark that he saw Employee with a knife in his hand. Tr. 53. Senn noted that the video showed his hand was still in his pocket. Tr. 54. Senn identified at the 15:47:24 mark that Employee hit him twice in the face and that with his other hand he was holding the knife and poked him in the arm. Tr. 54-55. Senn also identified at the 15:47:27 mark that his soda bottle fell to the ground and that Employee's hands were at his collar and that Senn had one hand on Employee's hoodie and one on his side. Tr. 55. Senn did not recognize the woman who appeared at Door 16 at the 15:47:43 mark. Tr. 57. Senn also testified that Employee was calling him a bitch and was saying that he hoped Senn's mother died. Tr. 58. At that time, the people who broke them up had pushed Senn back into the school. Tr. 58. Senn testified that when he went inside, he got on the elevator with Marcus Nesbitt, and that Malcom Hillard was already in the elevator when it opened. Tr. 59-60.

Senn noted that in the elevator, one of the other people there told him that he was bleeding. Tr. 60. Senn said he looked down and he saw blood dripping from his left hand. Tr. 60. He said that he went down to the trainer's office to get help with the bleeding. He said the trainer, (who he thought was named Jay) had him remove his hoodie and he noticed that his white thermal was bloody. Tr. 61. He identified Agency's Exhibit 2 as a picture from his left hand that was taken at an urgent care. Tr. 63. He identified a cut near one of his fingernails, one by the knuckle and one on the side. Tr. 63. Senn identified Agency's Exhibit 3 as a picture of a puncture on his forearm near his elbow. Tr. 65. He also noted that this picture was taken at an urgent care. Tr. 65. Senn identified Agency's Exhibit 4 as a picture of the left sleeve of his thermal as it appeared on April 3, 2024. Tr. 66. Senn testified after the trainer wrapped him up, he went to Ballou to watch the flag football game. Tr. 69. Senn cited that he did return to Coolidge to get the thermal that Jay cut. Tr. 69. Senn explained that Jay had put it in a bag and put it in the hazard trash. The trainer Jay was still there when he got back and after he left school, he went to the urgent care. Tr. 70.

Senn explained that his wound was stitched using "glue" at the urgent care facility. Tr. 70. Following the incident, Senn explained that he talked to Ms. Bright, the school principal, the same day of the altercation and that she asked him if he saw a knife, and he told her "Yes." Tr. 71. He also told Ms. Bright he went to urgent care. Tr. 72. Senn cited that he had returned to Coolidge after the incident and saw Employee but there was no interaction or conversation. Tr. 74. Senn testified that he did not report this incident to the police because he was going to handle it himself/ "dog him" to which he explained that meant that "I was just going to beat the shit out of him." Tr. 75. Senn said he did not do that, but Employee has had people contact him to have a conversation. Tr. 75. Senn explained that a neighbor who knows Employee said Employee wanted to talk to him about testifying. Tr. 77.

On cross examination, Senn reiterated that he was a running back coach and that when he came to the school, he came through the tunnel. Tr. 80. Senn cited that he would go through the tunnel if it were open, but if not, he would go to Door 16. Tr. 80. He said the security guard would open Door 16 for him. Tr. 80. Senn testified that he had a background check which revealed a misdemeanor charge. Tr. 82. Senn testified that he was not cleared by the athletic associations for background check. Tr. 83. Senn testified that on April 3, 2024, Coach Kevin had asked him to help with the girls' flag football team and that he was to ride with them on the bus to Ballou High School. Tr. 84. Senn noted that on that day, he entered through Door 16 and that a security guard had let him

in. Tr. 87. Senn explained that he thought this occurred around 3pm prior to dismissal. Tr. 88. He said he went straight to the football area/coaches' lounge and was in Coach Kevin's office. Tr. 89.

Senn testified that when he and Employee were outside of Door 16, that he had his left hand in his pocket and his soda bottle in his right hand. Tr. 90. Senn affirmed that he purchased the soda in the teacher's lounge, and he saw Employee when he got there. Tr. 93. He also cited that a student was with him because he did not know where the teachers' lounge was located. Tr. 93. He said he heard Employee say, "don't let them go in the teachers' lounge Smurf." T. 93. Senn affirmed that he did not allow any students to be in the teachers' lounge. Tr. 94. Senn also noted that he gave the honey bun to the student and walked by himself back to the atrium. Tr. 95. Senn explained that Employee walked over to him in the atrium and said to him that he "can't walk around the building like your own it." Tr. 96. Senn again stated that he didn't let anyone in the teachers' lounge. Senn denied that Employee told him that he [Employee] would be reprimanded for students in the lounge because the teachers' lounge was his duty post. Tr. 97. Senn affirmed that Employee never told him anything about his job being in jeopardy for students in the teachers' lounge. Tr. 99. Senn explained that he was sitting in a highchair in the atrium when Employee approached him. Tr. 100. Senn testified that he did not get up until Employee said, "let's step downstairs." Tr. 101. Senn further testified that he did not threaten Employee until after the altercation was broken up. Tr. 101.

Senn confirmed that he followed Employee outside. Tr. 102. He testified that Employee never told him not to follow him and if he did, he would have left. Tr. 102. Senn denied ever telling Employee that he was going to "blow him" as in shoot him. Tr. 103. Senn testified that Employee told him that he would "smoke him." Tr. 104. Senn cited that he did not say anything to Employee and once downstairs, Employee took off his jacket and said "yall niggas going to stop playing with me." Tr. 104. Senn said that he still thought that it would be a conversation and not an altercation. Tr. 105. Senn affirmed that he was not threatening or baiting Employee. Tr. 106. Senn affirmed that Employee pulled out a knife and cut him with it. Tr. 106. Senn demonstrated how Employee cut him while saying "I poke niggas like you." Tr. 107. He affirmed grabbing Employee by the collar. Tr. 108. Senn cited that they both called each other bitches. Tr. 108. Senn cited that the medical documentation showed he got stitches. Tr. 109. Senn testified that he was not sure how he got the cut on his ring finger. T. 112. Senn affirmed that he went to the trainer's office, and he cut off his thermal sleeve because it was bloody. Tr. 113. Senn explained that he did not know the location where he had been stabbed. Tr. 113. Senn noted that he was in the trainer's office for about 15 minutes and the trainer cleaned and wrapped up his arm. Tr. 114. Senn affirmed that afterward he went to the football game.

Senn also affirmed that he rode the bus back to Coolidge. Tr. 116. He also noted that Coach Kevin was also on the bus. Tr. 117. Once he arrived at Coolidge, Senn explained that he went and retrieved his thermal from the hazard bin and then went to an urgent care located in Capitol Hill. Tr. 117. Senn affirmed that he spoke to Principal Bright over the phone after the game, and that she was on the phone with Coach Kevin. Tr. 118. Senn did not meet with Principal Bright in person. He cited that Principal Bright asked him what happened, and he told her. He did not provide her with a written statement. Tr. 119. Senn also affirmed that he did not contact MPD. Tr. 119. Senn affirmed that his neighbor said that "they want me to holler at you about testifying…. [Employee] wanted me to talk to you about, he wanted to see where your head, wanted me to see where you head was at about testifying." Tr. 121. Senn explained that he didn't know what his neighbor was referring to, as this was before he knew anything about the hearing. Tr. 121. On redirect, Senn explained that he did not have a cut on his finger prior to the altercation with Employee.

Anthony Johns ("Johns") Tr. Vol. 1. Pp 128 – 146

Johns testified that he is a security officer with Security Assurance Management. Tr. 129. He affirmed that he was previously assigned to Coolidge high school where his duties included weapons screening and patrol. Tr. 129. Johns testified that he witnessed an altercation on April 3, 2024, between Employee and Senn. Tr. 130. He cited that Employee was an employee and that it was his first time seeing Senn, so he was not sure if he was an employee at Coolidge. Tr. 131. Johns explained that he first saw them by the elevator where it appeared they were having a heated discussion or argument. Tr. 131. Johns said he heard Employee say, "fuck it lets go outside." Tr. 131. Johns said that the two men then walked outside toward the parking lot. He saw Employee strike Senn in the face. Johns testified that he called for other officers to let them know that there was a physical altercation and he walked out to break up the fight. Tr. 132. Johns said that the other man struck Employee by hitting him and grabbing his collar. Tr. 133. Johns could not recall seeing anything in Employee's hand. Johns cited that he did not recall if Senn said anything to Employee while they were by the elevator, nor did he see Senn make any threatening motions toward Employee. Tr. 133. Johns affirmed that he saw Senn walking behind Employee and that it seemed like it was a mutual agreement to walk outside. Tr. 133-134.

Johns further testified that both men were holding each other when he went outside to break up the fight. Johns did not recall what hand Senn struck Employee with. Tr. 137. Johns cited that he got in between them and separated them. Johns did not remember what they were saying to each other. Tr. 139. He also stated that one of his coworkers came and he told them the men were in an altercation. He also noted that a teacher or staff member escorted Senn away. Johns noted that Employee was being calmed down, as he was still amped up. Johns noted that Employee was still trying to get at the other individual. Tr. 139. Johns testified that he had to do a report on what he witnessed. He identified Agency's Exhibit 6 as the report he completed regarding the incident. Tr. 140. Johns testified that he made a notification to MPD and spoke to someone on the phone but did not fill out any paperwork or report with MPD. Tr. 142.

On cross examination, Johns noted that volunteers are not allowed to enter through Door 16. Tr. 143. He did not know if Senn went through metal detectors on the day of the incident. Tr. 143. Johns affirmed that his statement did not mention Employee had a knife.Tr.144. Johns testified that he was asked to modify his statement to say that Employee had a knife, but he did not because he did not see it. He said the person who asked him to change it was Sgt. Milton. Tr. 145. On redirect, Johns testified that he had not seen the video of the incident. Tr. 146.

Jonfre Mann ("Mann") Tr. Vol. 1. Pp 152 – 168

Mann testified that he is employed by DCPS as an athletic trainer at Coolidge High School and has held that position since September 2021. Tr. 153. Mann affirmed that he was familiar with Employee because he was a football coach and behavior tech. Tr. 153. He also affirmed he knew Senn, who was an assistant to the football program. Tr. 154. Mann explained that in April 2024, he learned of an altercation between Employee and Senn. He cited that when Senn came to his office, Senn stated that Employee had stabbed him. Tr. 154. Mann said Senn seemed to be in a "state of amazement" that he was stabbed. Tr. 155. Mann observed that "about half of [Senn] sleeve/foreman was bloody. Tr. 155. Mann testified that he observed the wound, cleaned off the blood and looked to make sure there were no other puncture wounds. Tr. 155. Mann testified that he had to cut Senn's shirt and applied gauze and wrapped his arm. Initially, Mann discarded the shirt but noted that Senn later came back to get the shirt, so he put it in a small bag. Tr. 156. Mann identified Agency Exhibit

2 as Senn's hand where the wound was. Tr. 157. He also identified Agency Exhibit 3 where there was another wound and affirmed that both were an accurate representation of what he observed on April 3, 2024. Tr. 157. Mann identified Agency Exhibit 4 as the sleeve he cut, he noted the color of the shirt was white, and the red was the blood from Senn's forearm. Tr. 157. Mann said Senn asked him if he needed to go to the emergency room and that he told him in his professional opinion at that time that he did not since he wasn't woozy or dizzy. Tr. 158. Mann said he did advise Senn to go get checked out if he felt lightheaded or malaise. Tr. 158.

Mann testified that Principal Bright contacted him about the incident and that he also had a conversation with Coach Kevin Nesbitt. He also cited that he spoke to his athletic director about the incident. Mann affirmed that he prepared a statement and identified Agency's Exhibit 5 as his statement he gave to Principal Bright about his involvement. He also noted that this was sent via email. Tr. 160. Mann affirmed that he had general interactions with Employee throughout the year, most through the football program. Tr. 161. He also had general actions with Senn and did not know of any conflict or tension between Employee and Senn. Tr. 161.

On cross-examination, Mann affirmed that he has medical certification and that he treated Senn's wounds. Tr. 163. He affirmed that it was his medical opinion that Senn did not need to go to the emergency room and that if he saw serious injuries he would have advised him to seek further treatment. Tr. 164. Mann did not think Senn needed stitches but did not know if he did anything after he treated him. Tr. 164. Mann described the wrap and gauze he did for Senn. Tr. 165. Mann noted that he thought Senn had been wounded when he cut his sleeve. Tr. 166. Mann could not recall what time Senn came back to retrieve his sleeve. Tr. 166. Mann said he did not preserve it but put it in a plastic biohazard bag. Tr. 167. Mann identified Agency's Exhibit 4 as the condition of the sleeve when he came into your office. Mann said Senn did not take pictures while he was with him. Tr. 167. Mann testified that there was a "good amount" of blood on the sleeve but did not know the exact volume. Mann further testified that the blood would not expand if someone added water to the sleeve, but the clothing might look wet. Tr. 168.

Semanthe Bright ("Bright") Tr. Vol.1. Pp 171 – 232

Bright testified that she is the Principal at Coolidge High School and has been in that position for seven (7) years and has been with DCPS for 16 years. Tr. 172-173. Bright affirmed that she knows Employee, as he was previously employed at Coolidge as a behavior technician. Tr. 174. She explained that his job duties included managing hallways, ensuring students are always in supervision, attending classes and also providing support to students as needed. Tr. 174. Bright confirmed that she hired Employee Tr. 175. Bright testified that there were several altercations involving Employee and that the altercation on April 3, 2024, resulted in his termination. Tr. 175. Bright explained that on the evening of April 3, 2024, she received a call that Employee was in an altercation with another adult named Dion Senn, also known as Coach Smurf. Tr. 176. Bright noted that Senn was a volunteer football coach and that she selected him following interviews with the coaches and athletic director. Bright noted that coaches have access to the building by coming into the parking lot door where a security verifies, they are school staff. If they come in the front door, then they will go through weapons abatement. Bright recalled that Senn started in either late July or August of the school year. Tr. 177. Bright did not receive any reports of Senn having conflicts with staff and she did not have concerns about him as a volunteer. Tr. 178.

Bright testified that when she first learned about the altercation, she contacted Employee and asked him what happened. Following her conversation, she made a report for their Incident

Reporting Tool ("IRT")- and viewed the camera footage to see the incident. She said she saw other staff members in the video, so she asked them for reports of what transpired. Tr. 178. Bright also spoke to Senn and said he told her Employee had stabbed him, that Mann had helped stop the bleeding and that he was also going to go to urgent care. Tr. 179. Bright identified Agency's Exhibit 7 as the IRT she filled out regarding the incident. Tr. 181. Bright noted the different parts of the IRT report. Bright affirmed that she completed the narrative in the report and based it upon the information she received from Employee, Mann and Senn. Tr. 185. Bright further noted that the part in the narrative about Employee wielding a knife was based on her own observation of the video footage. Bright identified what and who she saw in her review of the video. She noted she also saw Mr. Alvarado, Mr. Senn, Ms. Harper, Dr. Brown and Ms. Johnson in video. She noted that Alvarado is an instructional aide at the school. Tr. 187.

Bright testified that she talked to Employee and that he told her he was trying to remove Coach Smurf from the second-floor vending machine area. Tr. 187-188. Bright explained there had been issues with students using the vending machines in the teachers' lounge. Bright said Employee told her that Senn/Smurf had threatened him and that they got into an altercation. Bright said she told Employee (because he was out the following day) that when he returned, he would have to write a statement and that she moved to her next step of reviewing the video and doing the IRT report. Tr. 189. She explained that after that, it became an investigation which was handled by the DCPS school security and Labor, Management and Employee Relations (LMER). Tr. 189. Bright testified that in reviewing the video, she was concerned that Employee used a weapon and that it was still school time. She also thought it was irrational and erratic behavior from Employee and that she was concerned for the safety of students and others. Tr. 189-190. Bright further testified that after viewing the video, she determined she should "immediately request adverse action based on seeing the pocketknife that was used in the attack." Tr. 190. Bright said there were other incidents that had previously occurred and that Employee had just come off a suspension, so this time she requested termination. Tr. 191.

On cross-examination, Bright testified that the previous altercations were not listed in the instant action, but each had their own notice. Tr. 192. Bright indicated that there were at least two adverse actions against Employee prior to this one. She explained that one was when a student said Employee assaulted him, and another was profanity/abusive language toward a student. Tr. 192. She further noted that regarding the assault, the student alleged that Employee hit/punched him in the face. Tr. 193. The profanity was when a student said Employee used profanity toward him and knocked his phone out of his hand and broke it. Tr. 194-195. Bright identified Employee's Exhibit 3 as the notice of adverse action for the April 3, 2024, incident. That notice referred to a five-day suspension for unnecessary use of force with a student that occurred on February 7, 2024. Tr. 197. Bright also described another incident that occurred on November 29, 2023, where a student alleged that Employee assaulted him. Tr. 202-204.

Bright affirmed that she approved Mr. Senn as a volunteer football coach. Tr. 211. Bright cited that Senn completed multi-day volunteer forms. Tr. 212. Bright reiterated that if someone came in through the main door of the school, they must go through weapons abatement. Tr. 213. She reiterated that there was a security guard at the parking lot door, but not a weapons abatement machine and the security guard allowed visitors to enter. Tr. 214. Bright cited that most people who are familiar with the school will enter through Door 16 and not all those who enter have a fob for that door. Tr. 314. Bright testified that she did not call Coach Smurf but did speak to him and he told her that he was stabbed. Tr. 216. She affirmed that she saw Employee stab Senn when she viewed the video of the incident. Tr. 217. [VIDEO WAS PLAYED]. Bright viewed the video and pointed to

where she saw Employee lunging and jabbing. Bright identified the time stamp of 15.47.21 where she saw the weapon and in 15.47.23 when she saw it in Employee's hand. She identified Employee hitting Senn at timestamp 15.47.25 and at 15.47.26 she saw Employee jab Senn. Tr. 22-223. Bright testified that on the day of the incident, Officer Johns was over Door 16, but she does not know if he let Senn in that day. Tr. 226. Bright did not review any second-floor camera footage. Tr. 226. On redirect, Bright testified that when Employee was initially talking to her about the incident, he did not say that Senn threatened him. Tr. 232.

Yvette Towe ("Towe") Tr. Vol 1. Pp. 234-279

Towe is the Deputy Chief of Labor Management and Employee Relations. Her duties include employee discipline, EEO, ADA and other employee relations. Tr. 245. Towe affirmed that she evaluated an adverse action for Employee for an incident that occurred in April 2024. Tr. 236. Towe explained that her usual process for adverse action usually begins when a school administrator requests an action. Towe further noted that it's then evaluated by specialists who determine if there is enough information for an adverse action. Tr. 236. If more information is needed, the school administrator who submitted the request is contacted to provide further information. Tr. 237. Following this, the adverse action proceeds, and the employee and union are contacted and provided the option to submit a written statement or set up an interview. Tr. 237. Following this, the action goes to the Office of the general counsel to determine legal sufficiency. Tr. 237. After determination for legal sufficiency, it is sent to over for a determination of what the level of discipline should be. This recommendation is then evaluated with Douglas factors to make a final determination of discipline. Tr. 237. Towe further explained that after this is all approved, it is sent to the employee based on the respective CBA ("Collective Bargaining Agreement") requirements. Tr. 238.

Towe testified that for the current adverse action, witness statements were received, a request for adverse action, a copy of the incident reporting tool and a statement of what was going on. There were also pictures from the victim and video evidence. Tr. 238. Towe also explained that when there is an adverse action, an employee could be placed on administrative leave while the adverse action is pending. Tr. 239. Towe identified Agency's Exhibit 8 that placed Employee on administrative leave. Towe also identified Agency's Exhibit 9 as the disciplinary action recommendation form that also includes the *Douglas* factor rationale. Tr. 242. In review of Exhibit 9, Towe noted that in assessing the *Douglas* factor "seriousness of offense," because it was an altercation that involved a weapon it affects the safety of Agency's operations and she considered that to be "highly aggravating". Tr. 244. Towe also testified that it was determined that Employee had not exercise good judgement or trustworthiness. Tr. 245. Towe also explained that Employee had not been with Agency long, so that was considered to be mitigating. Tr. 246. Towe also noted that there was an erosion of supervisory confidence and that the penalty of termination was similar to other cases. Tr. 247. Towe further explained the other factors and considerations, citing that they considered the potential for rehabilitation, but Employee had stabbed another person, so it was considered aggravating. Tr. 248-250. Towe cited that there were no mitigating factors, so that was neutral and that they felt a lesser sanction would not be appropriate in this matter. Tr. 250. Towe identified Agency's Exhibit 10 as the notice of termination to Employee. Tr. 251. She explained that his notice is required to notify an employee of the decision and outcome of the investigation pursuant to the CBA. Tr. 252.

On cross-examination, Towe cited that it was her understanding that Senn was a volunteer and that she did not know how he entered the school premises that day. Tr. 255-256. Towe testified that she did not know what the verbal altercation was about, but that they ultimately took it outside, which was captured on video, and a knife was pulled, and another person was injured. Tr. 257. Towe

did not know what the security protocols were for volunteers, nor was she aware of whether Senn was cleared by DCPS. Tr. 258. Towe testified that she did not personally conduct an investigation in this case. Tr. 259. Towe identified her signature on Employee's Exhibit 10. Tr. 261-262. Towe iterated that an investigation was conducted through the adverse action process. Tr. 262-263. Towe explained that witness statements were collected by the principal and were sent as part of the adverse action request. Tr. 264. Towe did not recall the witness statements. Tr. 265. She cited that the incident would have been reported through the Incident Reporting Tool ("IRT"). Tr. 265. Towe did not remember if the IRT said Employee stabbed someone. Tr. 266. Towe did not know who took the photos that were provided as part of the adverse action request. Tr. 267.

Towe testified that in assessing the *Douglas* factors, she evaluated whether pulling a knife was exercising good judgement. Tr. 268. Towe said in her view of the video, it looked like Employee had a switchblade. Tr. 268. She also noted that Employee elected to step outside to have a fight. Tr. 269. She noted that Employee said that in the statement he submitted. Tr. 269. She also evaluated his previous suspension. Tr. 270. Towe also noted that there are requirements for notice for suspension pursuant to the collective bargaining agreement with Employee's union – AFSME. Tr. 271. Towe reiterated that she did not know what the verbal altercation involved, but that one followed the other outside and they had a fight with a knife involved. Tr. 274. Towe reiterated that she did not personally investigate the matter, but she reviewed all the materials to make sure the process was followed. She then reviewed everything as a whole and went through the *Douglas* factors to make sure all is compliant. Tr. 274-275. Towe affirmed that based on the video, IRT, Employee's statement, there was enough information to sustain this action against Employee. Tr. 276. Towe affirmed that she saw Senn follow Employee outside. Tr. 277. She did not recall if Senn had threatened Employee. Tr. 278. Towe reiterated that her conclusion was that Employee hit Senn with a knife. Tr. 279.

Employee's Case in Chief

Dr. Ashley Brown ("Brown") Tr. Vol. 1. Pp 289 – 313

Brown testified that she works at Coolidge High School as a visual arts teacher. She cited that this was her third year at Coolidge. Tr. 290. Brown affirmed she knows Employee and that he used to work at Coolidge as a behavior tech. Tr. 291. She noted that he worked there for as long as she had, which was approximately two years. Tr. 292. She testified that he had a good reputation and that he was a behavior tech and a football coach. Tr. 292. She affirmed he was known as Coach H and that the kids and staff respected him. Tr. 293. Brown testified that she knew Senn as Coach Smurf. Tr. 293. She said he was an alumni volunteer, and she did not know him personally or know about his reputation. Tr. 294.

Brown affirmed that she knew of the April 3, 2024, incident which she said happened outside of Door 16, staff parking lot. Tr. 294. She said the door was secured and fobs were needed. She noted that volunteers weren't allowed to come through that door. Tr. 295. Brown said that on the day of the incident, she was coming back from lunch and was in a car with her coworker Ms. Harper when they heard noise and saw Employee and Senn. Tr. 295. She said she was confused because she thought it was a student in a lettermen jacket and wondered "if they were playing". Tr. 295-296. She realized it was two adults who weren't playing, and they went to intervene and separate them. Tr. 296. Brown did not see Employee with a knife. Tr. 296. She said as they approached, they were both grabbing each other, and she didn't see any blood on either person. Tr. 296. She noted that another teacher, Ms. Mulangamphuma, was the first teacher there and saw everything. Tr. 297. She cited that

after they were separated, she heard Smurf call Employee a "bitch ass nigger" and was still provoking him. Tr. 297. Brown reiterated that she saw no blood. Tr. 298. Brown did not recall exactly what was said between the two but noted there was a lot of cursing. Tr. 299.

Brown identified Employee's Exhibit 5 as her statement that she submitted to Principal Bright. Tr. 299. Brown did not recall what Employee said to Senn as they were intervening, citing that it happened a year ago. Tr. 302. She cited that Smurf would not let Employee go when Employee was asking him to do so. Tr. 304. Brown did not see Employee thrust or make thrusting movements toward Senn. Tr. 205. Brown cited that she saw both men grabbing their jackets (around their collars). Tr. 305. Brown testified that she did not hear Employee say to Smurf that he was going to kill him, that he was going to smoke him, or that he hoped his mother died. Tr. 306. Brown cited that she was contacted by Dean Alston about the incident and affirmed he was a union representative. Tr. 307. She recalled other coworkers who were asked to give statements. Tr. 308. She said none of them were contacted about the investigation. Tr. 308. Brown also testified that she has seen Senn on campus since the incident, at a football game. Tr. 308. Brown noted she was surprised to hear that Employee was terminated. Tr. 308.

On cross-examination, Brown reiterated that Employee and Senn were grabbing each other by the collars of their jackets. Tr. 309. Brown did not see what happened prior to that. Tr. 310. She affirmed that she did not see either man hitting one another. Tr. 310. Brown could not recall if Employee was also cursing. Brown cited Senn's actions were escalating the incident since he called Employe a "bitch ass nigger." Tr. 312. Brown does not recall what Employee was doing at this time, citing she was focused on Senn. Tr. 313.

Paulina Harper ("Harper") Tr. Vol. 1. Pp. 316 – 339

Harper testified that she works at Coolidge High School as a general education teacher, where she teaches English. Tr. 317. She cited that she has worked at Cooledge High School for approximately three (3) years. Harper affirmed that she knows Employee, but that she knows him as "H." Tr. 317. Harper noted that Coach H was a behavioral tech and football coach. Tr. 318. She cited that from what she observed, Employee's reputation was "very thorough, very professional." Tr. 318. She also noted that Employee had a good rapport with a lot of the students and some of their family members. Tr. 319. Harper did not know Dion Senn by his given name but did note that she heard of a person called "Smurf." Tr. 319. Harper stated she did not know Senn. Harper explained that Door 16 is at the back of the school and that's where they park so many go through Door 16. Tr. 320. Harper said if volunteers have a fob they can get in or if a staff member lets them in. She cited that most volunteers come through Door 16, especially after school. Tr. 321. Harper was not sure about the policy of the security around Door 16. Tr. 322.

Harper testified that on the day of the incident, she was returning to campus from getting food with her coworker, Dr. Brown. Tr. 323. Harper said she initially thought students were fighting. When she got out the car, she realized it was Employee and Senn engaged in "grabbing at each other like this." Harper demonstrated clinching fist and holding each other. Tr. 325. Harper did not make contact with either of them. She did not see any weapons or a knife on Employee Tr. 325. She did not recall Senn grabbing his arm. Tr. 326. She identified Employee's Exhibit 11 as her statement provided to Principal Bright. Tr. 326. Harper did not recall typing the statement, although she identified her electronic signature. She cited that she emailed Principal Bright directly. Tr. 328. She said someone contacted her who was representing Employee, and this was the information she provided. Tr. 328. It was determined that Exhibit 11 was prepared by Attorney Ford's office. Tr. 330.

Harper did not know if the statement she submitted to Principal Bright was provided to LMER. TR. 332. She testified that LMER did not contact her about her statement and that Principal Bright told her she had received her statement. Tr. 332. Harper further testified that she did not see a teacher named Ms. M. outside but thought she may have been inside when the incident initially happened. Tr. 333. Harper did not know whether Ms. M statement was sent to DCPS or LMER. Tr. 334. Harper explained that she provided her statement within one or two days of the incident and reiterated that she sent it by email. Tr. 335.

On cross-examination, Harper reiterated that when she first saw Employee and Senn, they were at a standstill and were grabbing each other by their collars. Tr. 336. Harper testified that she didn't see any blood outside, but that when she went inside, she saw "very small drops of blood." Tr. 337. Harper remembered seeing the blood in the hallway approximately 20 feet away from Door 16 toward the elevator. Tr. 337. On redirect, Harper stated that she did not see Senn get on the elevator. She didn't remember where Senn went, citing that everything happened so quickly. Tr. 339.

Jorge Salazar ("Salazar") Tr. Vol. 2. Pp. 8 – 85

Salazar testified that he is the acting director of LMER. Tr. 8. Prior to this role, he served as manager from March 2020 until the time he became the acting director. Salazar affirmed that he signed Employee's Exhibit 10. Tr. 10-11. Salazar also affirmed that he verified that "the response to interrogatory number 21 was truthful" to the best of his knowledge. Tr. 11. Salazar affirmed that he answered that he believed that all collective bargaining procedures were followed in the administration of Employee's disciplinary matter. Tr. 11. Salazar also affirmed that he is familiar with and identified Employee's Exhibit 12 as the CBA between Employee's union and DCPS. Tr. 13. Salazar testified that he was familiar with Employee's case and reviewed the underlying record regarding his termination. Tr. 14-15. Salazar cited that he reviewed the adverse action itself, the document submitted by Principal Bright and reviewed "multiple statements from witnesses of the incident." Tr. 15. He also noted that he reviewed the video footage of the incident and images of the victim's injuries. Tr. 16. He affirmed that he reviewed video footage before the decision to terminate Employee was confirmed.

Salazar testified that based upon his knowledge as a manager at the time of Employee's termination, that the notice of adverse action did not include the video. Tr. 19. Salazar explained that given the sensitive nature of students being recorded, videos are not provided. Tr. 20. Salazar testified that on May 10, [2024][6], Employee was "provided the materials that the discipline was relied upon…and at that time, the security video footage was identified as also being relied upon, and that he could submit a request for us and we would arrange a date and time to allow him to view the video." Tr. 20. Salazar affirmed that Employee was not sent a copy of the video at that time. Salazar further explained that Employee reached out to LMER, but he could not recall if Employee requested access to the video. Tr. 21. Salazar did affirm that Employee submitted an email on June 3, 2024, to LMER asking for a copy of all of the discovery materials that the school had used. Salazar cited that on June 4, [2024], they responded to Employee noting that they were unsure of what he was requesting and asked him to be more specific. Tr 21. Salazar said he made this request after all the notice materials were already provided and after he was told on May 10, 2024, that he could arrange a time to view the video. Tr. 22.

[6] During testimony, both the representative and witness referred to just the dates. The AJ noted that dates should be referenced to include the year given.

Salazar affirmed that the email was sent by LMER on May 10, [2024]. Tr. 22. Salzar cited that the email was sent to Employee's k-12.dc.gov email address. Tr. 22. Salazar was not sure when Employee's work email was disabled. Tr. 23. Salazar affirmed again that Employee sent an email on June 3, 204 and that he responded the next day. Tr. 25. Salazar noted that he sent an email on May 10, 2024.[7] Salazar affirmed that Employee's Exhibit 14 was the email he referred to receiving on June 3, 2024. Tr. 66. Salazar testified that he did not hear back from Employee and that to his knowledge, LMER did not send another email after this. Tr. 68. Salazar explained that his emails were from his personal email inbox and the LMER email inbox. Tr. 69. Salazar did not think there would be any other email he would have communicated from and could not speak for the rest of his team member. Tr. 69. Salazar asserted that he was the primary person on his team who was assigned to correspond with Employee. Tr. 69. Salazar testified that he recognized Employee's Exhibit 15 as the email exchange he had with Employee on May 10, 2024. Tr. 71. Salazar went on to affirm time stamps reflected in the emails. Tr. 72-74. Salazar affirmed that the email in Employee's Exhibit 15 was the email he was referring to when he said Employee could see the security footage. Tr. 75. Salazar testified that he did not believe this was forwarded to Employee's Gmail email account as Employee had requested. Tr. 75.

On cross-examination, Salazar identified Agency's Exhibit 11 as an email that was sent to Employee from the LMER inbox that provided the materials that were relied upon in issuing him his termination and also share that he would be given access to view the video upon request. Tr. 78. He affirmed that it was a true and accurate copy of what was sent on May 10, 2024. In review of the email thread from May 10, 2024, Salazar affirmed that Employee sent an email at 9:21am and that it came from Employee's DCPS email address. Salazar also affirmed that the exhibit reflected that LMER responded at 10:01:45 to Employee's email. Salazar further confirmed that on May 10, 2024, in this thread, an email was received from Employee at 10:02am and that it came from his DCPS email address. Tr. 82-83. Salazar also cited that on May 10, 2024, at 2:28:50pm, DCPS responded with the materials relied upon to Employee's DCPS email address. Tr 83. Upon review, Salazar testified that Employee's effective date of termination was May 20, 2024. Tr. 84.

On redirect, Salazar cited that he did not know when Employee was "locked out of his email." Tr. 85. Salazar explained that he was unaware of a specific policy citing that DCPS cannot block employees out of their email until after the effective date of their termination. Tr. 85.

Employee Tr. Vol. 2. Pp. 87- 224

Employee testified that he previously worked for DCPS but currently works for KIPP. He began working at KIPP in September 2024. Prior to this, he worked at Coolidge High School for DCPS as a Behavior Tech. Tr. 88-89. He cited that he worked there from 2021 to 2024. He further testified that his responsibilities while at Coolidge included student safety. He was also a football coach and did mediations with the administrations. Tr .91. He cited that the school day begins at 8:30am and ends at 3:30pm. Employee cited that he received TACT2 training – training and security protocol. Tr. 92-93. He also noted that he received training about protocols, namely that all non- staff must enter through the Fifth Street entrance and go through security and weapons abatement. Tr. 94. He explained that any volunteers would have to be cleared with a DCPS badge or have a volunteer badge to access inner doors and if not, the head coach would have to come to get them onto the premises. Tr. 94. He noted that most coaches come through the football field or the tunnel if they are coming for afternoon practices. Tr. 95. Employee also noted that Door 16 did not allow entry for

[7] Testimony was paused to address discovery/exhibits related to witness testimony.

non-employees due to previous threats and safety concerns. Tr. 95. Employee stated that only staff were allowed to use Door 16. Tr. 96.

Employee testified that he received performance evaluations while working at DCPS. He believed that the highest score was a 4 and the lowest was like a 2 or a 1.5. He cited that he was evaluated by the vice principals and the dean of students (Robert Austin). He said he was evaluated on performance and action with students, accountability etc. Tr. 97. Employee cited that he believed his highest performance evaluation score was a 3.8, which was signed by Principal Bright. Tr. 98. He also noted that his lowest score was a 3.8, in that he received a score of 3.8 for all three (3) years of performance evaluations. Employee affirmed that prior to the instant action, he had received a five-day suspension for "verbal unnecessary force with a student." He recalled that this incident occurred in November 2023. Tr. 98-99. Employee explained the incident regarding the mishandling of the student. He was called to a classroom to assist a teacher with a student who was cursing. Employee asserted that he followed the TACT2 training in the handling of the student. T. 100-106. He removed the student, but over the course of the interaction, the student became more "belligerent, sulking, whine.etc." Tr. 110. He said he was still waiting for assistance with the student, when the student reached for his pockets and he told the student to stay still, but the student still went for a phone. He took the phone and told the student to stay still. He cited that MPD was called, but that there were no charges pressed. Tr. 112-113. Employee explained that there are police officers – school resource officer ("SRO")- assigned to the schools. Employee explained that he learned of the discipline upon Principal Bright's return from leave. Tr. 119-120.

Employee testified that he knew Senn as a volunteer coach. Tr. 122. He cited that he didn't have a specific role but was someone Coach Kevin had as a volunteer. Tr. 123. He cited that Coach Kevin is the head coach for varsity boys' football at Coolidge. Employee asserted that Senn was not cleared to be a DCPS volunteer. Tr. 123. He also noted that Senn did not have credentials to come on campus or into the building. Tr. 125. Employee affirmed that he saw Senn on April 3, 2024. He thought it was around 2pm or so in the evening and school was still in session. Tr. 126. Employee explained that he was on his duty post on the second floor when he first saw Senn. Tr. 126. He said they greeted each other and he asked him what he was doing up there. Tr. 126. Employee avers that Senn asked him to direct him to the teacher's lounge and that he told him it was down the hall. Employee testified that he saw that Senn had two players with him. Senn also told him he was coming downstairs from where he was let in from Door 16. Tr. 128. Employee said he told Senn not to let students in the teacher's lounge and that they were just reprimanded and could get in trouble. Tr. 129. Employee said Senn put his thumbs up and was like "alright I got you." Tr. 129-130.

Employee affirmed that his nickname at the school was Coach H. He asserted that it was an acronym for a youth program he started in 2015.Tr. 130. Employee explained that he saw Senn and students going into the lounge. He said he did not say anything to Senn at that time because it was time for dismissal and he had to get to his post in front of Fifth Street. Tr. 131. Employee noted that he got to his study post around 3:07, 3:10pm and that dismissal was at 3:15pm. Employee explained that once he finished, he left his duty post and went back to the second floor to grab his belongings and leave for the weekend. Tr. 132. He said Officer Johns stopped him and asked him to give a student on the flag football team their coat. He cited that he saw Officer Johns while he was sitting at Door 16. Tr. 133. Employee further explained that the flag football team had a game and were preparing to leave and were sitting in the atrium on the first floor. Tr. 133. He saw Coach Smurf sitting at a high-top table in the atrium. Tr. 134. Employe cited that he gave the student the coat and said to Coach Smurf "when you come in the building, if you cannot follow the rules and regulations which we got to abide by, don't come in here until after 4:00, which you been doing.... Don't come in

the building because you're jeopardizing my livelihood by letting kids in the teacher's lounge and you don't work here, and you're not even cleared to be in the building until after 4:00." Tr. 134.

Employee testified that Coach Smurf "jumped up on his chair and said to him I don't know who the fuck you think your bitch ass talking to… I'm not scared of you. I'm not one of these niggas and you got me fucked up." Tr. 135. Employee asserted that he had not had any prior bad interactions with Smurf and that he was not expecting that Tr. 135. Employee further explained he was shocked, and he turned to him and told him he needed to lower his tone. Tr. 135. He said he told Smurf that they could have a concertation "a whole another day, because when I was leaving, I was leaving for the weekend to celebrate my birthday." Tr. 136. Employee asserted that Senn told him they could talk now and that he said, "sure we can talk now, let's get away from the kids, let's go inside the coach's suite." Tr. 136. Employee cited that after that, Coach Cameron told him, "Let it go H" and he told him "I'm not. I'm not trying to fight, I'm letting him know, he can't do that in here." Tr. 136.

Employee testified that as they were walking away, Senn was still saying that he had him fucked up and that he would "blow your ass up…you think people scared of you…you think people scared of you." Tr. 136. Employee said blow your ass up meant Senn would shoot him or was referencing a gun. Tr.137. Employee explained that they continued to walk to the elevator and while waiting for the elevator, Senn "clutching his hand in his left pocket.". Tr 137. Employee cited that he told him "I'm not trying to keep hearing this gangster talk, I'm trying to talk to you as a man as you come into the building. Tr. 138. Employee said that Senn was wearing a letterman jacket while he had his hand in his left pocket. Tr. 138. Employee said, Senn also told him, "You better be glad I parked on the lower parking lot." Employee said he took that to mean that Senn was trying to bring him bodily harm and if he parked at the top, he might feel more comfortable doing something. Tr. 138. Employee said he was feeling threatened and attacked inside his job. Tr. 139. They did not get on the elevator, because Employee cited that they didn't really want to get on the elevator because he didn't know what Senn "was possessing" and didn't want an altercation. Tr. 140. Employee stated that he walked away from it twice. Tr. 140.

At this point, Employee explained that they were by Door 16 and Officer Johns was there. Employee testified that he walked out of the door first and that Senn was following him. Tr. 140. Employee said Senn had one hand in his pocket. Tr. 141. [Agency Exhibit 1 – Video was played]. Employee identified himself looking over his shoulder and said he was trying to see what Senn was doing with his coat and left hand in the pocket. Tr. 142. Employee explained that he didn't know what Senn had in his pocket. He stated that Senn was saying "come on let's keep going toward my car." Tr. 143. Employee testified that they made contact. Employee cited that he had an object in his hand, which was a tool he used for operating and had on him for the last three years as a tool. Tr. 143. Employee asserted that Senn saw this tool and he said, "what are you going to do with that little ass tool." Tr. 143. Employee cited that he then "stole him" which meant he punched Senn with his left hand. Tr. 143.

Employee explained that the "tool" is a multi-kit, he said that the way he is holding it, it looks like a sharp object, but it's not. It is tool that helps them on the field to be able to quickly change the equipment as far as screws and hooks coming out of their helmets. Tr. 144. Employee affirmed that he had the tool in his hand and that he used the tool over the three years to fix players' equipment and make adjustments etc. Tr. 144. He said that it was attached to his keys and that they were in his hoodie pocket. Tr. 145. [Employee stood to demonstrate]. Employee testified that when he saw Senn coming down the steps after him that "he looked, zapped me down, like oh, what's that

little shit going to do?" Tr. 147. Employee testified that he had the tool in his right and swung with his left, then proceeded to swing with his right hand. Tr. 147. Employee explained that after he swung, Senn tried to grab [Employee demonstrated grabbing collar] him. Tr. 147-148. Employee testified that the tool was still in his hand, but that he did not thrust the tool toward Senn's face or his person. Tr. 148.

Employee cited that after they had grabbed one another, he recalled Officer Johns came to separate them. Tr. 150. Employee again cited Agency's Exhibit 1 and noted at 15:48:27 about the locations of his hands and Senn's hands. He cited that his right hand was under Senn's left armpit and that his keys with the tool attached were still in his hand. Tr. 152-153. Employee explained that as they tussled, he moved his hand, because he was slipping and didn't want to fall. Tr. 154. Employee asserted that at no point did he stab Senn in his forearm. Tr. 155. He also testified that he did not stab him in the armpit or the fingers. Tr. 156. Employee explained that the Senn's bloody fingers could have ben from an object that Senn had in his pocket or maybe from the cement but iterated he did not stab Senn in his finger Tr. 156. Employee further testified that he did not know Senn had a forearm injury until after the fact and reiterated that he never thrusted a weapon toward Senn. Tr. 156-157.

Employee testified that after they were separated, Senn kept saying things like "school can't save you, I'm going to catch up with you, I'm going to blow your ass up, this ain't over etc." Tr. 157. Employee said he felt as though Senn was assaulting his character. Employee cited that Senn also said he was going to "pull up" at his house. Tr. 158. Employee said that after all of this, he remained in the same parking lot captured by the security footage. Tr. 159. He spoke with the Athletic Director, Herman Frazier, who asked Employee what happened. Tr. 159. He said he told Frazier what happened and that someone had let "Smurf in through Door 16." Tr. 159. Employee said that during this time, it had occurred to him that Senn had not gone through security protocols, which made him be on alert because of the way the conversation went in the atrium. Tr. 160.

Employee further testified that he talked to Principal Bright that same day and that her initial response was "[w]ho was the dude Smurf again and why was he in the building?" Tr. 161. Employee said he told her to talk with Coach Kevin. Employee also reiterated that Senn was not cleared by DCPS or DCIAA Tr. 164. Employee said he did not know why Smurf was there that day. Employee said he met with Principal Bright after he came back from vacation, so it was probably the following Tuesday. Employee testified that April 3, 2024, was a Friday. Tr. 165. Employee noted that Bright showed him a letter from LMER indicating that he was on administrative leave effective that day. Tr. 165-166. Employee noted that he wrote a statement when he went to Bright's office and that she also asked Mr. Austin to come to her office. Tr. 166. Employee identified Employee's Exhibit 13 as the statement he wrote and submitted to LMER. Tr. 168. It was also sent to Robert Austin and DCPS Adverse Action. Tr. 168. Employee affirmed that Austin was present when he met with Principal Bright. Tr. 171. He asked Austin if he should reach out to the union and that Austin told him to call the union, which he did. Tr. 172. He said that the union told him they could not represent him because it was a conflict of interest. Tr. 173. Employee cited that neither Bright nor Austin told him during the conversation in Bright's office what the adverse action was. He said they told him the allegations but didn't explain what adverse action meant. Tr. 175. Employee identified Employee's Exhibit 4 as the letter he received in Bright's office. Tr. 175-176.

Employee asserted that there was no investigatory meeting where he had a union representative. He also cited that LMER did not call him for a final investigation nor did anyone from DCPS. Tr. 177. Employee testified that to his knowledge, MPD was not called on the day of the

incident. He was neither questioned or charged with assault and no MPD officer ever contacted him. Tr. 180. Employee identified Exhibit 3 as the Notice of Adverse Action dated May 3, 2024. He cited that he received it via email – through his DC Public Schools email. He also received a copy via mail. Tr. 181. He said witnesses' statements were attached to the email in Exhibit 3. Tr. 182-183. He also recalled a photo and some other attachments but could not say specifically. Employee explained that he reached out to them for discovery which may have been around May 10, 2024. Tr. 184. Employee identified Employee's Exhibit 15 as an email he sent at 9:21am on May 10, 2024. Tr. 186. He cited that in that email; he requested that the discovery package be sent to his personal email. Tr. 186. He received a response and responded back right way. Tr. 187. He waited for the materials to be delivered but noted he did not receive them. Tr. 187-188.

Employee testified that he was locked out of his email right after that on May 10, 2024. He said on May 11, 2024, Coach Kevin reached out and asked him to bring his laptop, keys, work ID badge and anything else that belonged to the school. Employee asserted that this occurred on a Friday. Tr. 188. Employee testified that he did not receive a response from LMER later that day. He further testified that he emailed LMER on June 3, 2024. He cited that he did not receive LMER's June 7, 2024, response until after he acquired his representation. He also noted that he did not see the video footage until after his representative showed it to him. Tr. 191. Employee cited that he was locked out of his email on May 11, 2024. Tt. 191.

On cross examination, Employee affirmed that he was hired with DCPS in 2021. He affirmed that he was a behavior tech and that it was a full-time position at Coolidge High School. He also stated that Bright hired him and that he was rated "effective" on his IMPACT evaluations. Tr. 195. He affirmed that as a behavior tech, he supported students with various disabilities and behavioral challenges and that a part of his duties also included implementing appropriate interventions to respond to student behavior. Tr. 196. He also affirmed that he received training on how to deescalate or manage students who are exhibiting physical aggression.

When asked about his previous statement that April 3, 2024, was a Friday, Employee said that he could not recall whether April 3, 2024, was a Wednesday. Tr. 198. ***The AJ took judicial notice and noted that the calendar reflected that April 3, 2024, was a Wednesday***. Employee affirmed that when he first saw Senn, he was coming off the elevator where the teacher's lounge was and the next time, he saw him was in the atrium. Tr. 199. Employee affirmed that he told Senn that if he couldn't follow rules that he should come after 4pm. Employee cited that since he was an assistant coach, he had authority to tell Senn not to come into the building. Tr. 200. Employee affirmed that Senn made comments that he perceived as threatening. He testified that the flag football team, Coach Kevin and other staff were in the atrium. Tr. 201. Employee affirmed that he opened Door 16 to walk outside and that he walked out of the door first. Tr. 203. He cited that Senn walks with a limp but that he was following behind him with a posture "that his trying to -what he was saying he was going to do to me." Tr. 203. In review of the video footage, Employee affirmed that at timestamp 15:47:17 that he was walking out the door and that Senn was behind him. Tr. 204. He also cited to seeing Senn still at the top of the steps and that at timestamp 15:47:20, that Employee was on the sidewalk and that Senn was still at the top of the steps at that time. Tr. 204-205. He affirmed that at 15:47:22 that he took a step towards Senn and that there was an object in his right hand. He cited that it was the tool he previously described. Tr. 205.

Employee testified that the tool was a multi-purpose tool that has a screwdriver on it, a T-hook clinger, a filer and scissors. He noted that it can be accessible for any football equipment. Tr. 206. Employe further testified that he could not "tell offhand" what part of the tool he had extended

because he "flung [his] keys out in a state of being pressured." He cited that he was "being threatened so [he] was mad." When asked if at timestamp 15:47:24 that Senn was standing stationary and Employee struck him with his left hand with a closed fist, Employee responded that Senn "was standing in the defensive posture and I don't know what's in his left pocket." Tr. 206-207. When asked to explain what the defensive posture was, Employee cited that Senn's hand was in his pocket, and he was making threatening remarks. Tr. 207. He iterated that what he saw at timestamp 15:47:23 was Senn in a defensive posture. Tr. 207. When asked whether he struck Senn in the face twice with his left hand, Employee responded that it was his right hand first and then his left hand. Tr. 207-208. He had the tool in his right hand. Tr. 208. Employee cited that at 15:47:24, he swung at Senn with his left hand but did not connect and that he connected with his right hand. Tr. 208.

Employee affirmed that he had the tool in his right hand. Tr. 208. Employee said he did not walk away when he went outside because Senn was walking behind him and he took that as a threat. Tr. 209. He cited that he was proceeding to walk away until he noticed Senn and that caused him to turn around. Tr. 209. When asked whether he said, "let's go outside" to Senn, Employee responded that he said, "F it, we can go outside…and that wasn't a mean to bring any harm or to have a fight." Tr. 210. Employee affirmed that he struck Senn with a closed fist first because Senn threatened him. Tr. 210. He iterated that he did not get a chance to walk to the parking lot because he was being followed. Tr. 210.

Employee asserted that he did not receive the May 10, 2024, email from LMER that arrived at 2:28pm. Tr. 211. Employee testified that when he tried to access his DCPS email, he was locked out. Employee testified that he tried to check his DCPS email again on May 11, 2024. Tr. 212. Employee also testified that he did not receive the June 7, 2024, email from LMER that went to his Gmail account. He cited that after June 3, 2024, he did not follow up with LMER via email, as he attempted to retain a lawyer and followed up with the union since LMER was not responding. Tr. 214. Employee testified that he didn't know if he called someone at LMER or if it was the union or OEA. Tr. 214. Employee further testified that he did not check his DCPS email after 10am on May 10, 2024.

On redirect examination, Employee affirmed that he spoke to Ms. Bright after his birthday.[8] He cited that his birthday fell on a Sunday and that he was out of work that Monday, so he talked to Principal Bright that Tuesday. Tr. 220-221. Employee affirmed that the door where Officer Johns was standing during the confrontation was see-through glass. Tr.222. Employee testified that after he was told to turn in all his DCPS property, he assumed he would be able to access his emails. Employee also noted that he was never advised by Austin or Bright on how to get the materials. Tr. 222-223. Employee affirmed that his Gmail address was what he used to inquire about his case. Tr. 223. He did not recall receiving any emails from LMER to his Gmail address. Tr. 224.

Agency Rebuttal

Brian Gloor ("Gloor") Tr. Vol 3. Pp. 13 – 33

Gloor testified that he is the Director of the Employee Experience at DCPS. Tr. 13. He has been in that position for over a year and prior to that was the Manager for Employee Services. In his role as manager, Gloor oversaw clearance and fingerprinting compliance, and onboarding and offboarding of employees for DCPS. Tr. 14. As the director, his responsibilities are the same and

[8] Employee provided his birthday but given it is PII it will not be listed in this decision.

also include strategic initiative, planning and compliance. Gloor testified that managing email access is part of the onboarding and offboarding process.

Gloor explained that in the offboarding process, when they receive a termination notice, they begin the process of providing SF50 forms, and deprovisioning email access and systems once they officially separate from Agency. Tr. 15. Gloor further cited that they typically submit a request to OCTO to deprovision email accounts "within three days of an employee's or after, employee's separation date." Tr. 15. They submit an official OCTO ticket through the OCTO helpdesk to submit this form. Tr. 15. Gloor also testified that he has a coordinator for onboarding and offboarding who submits the request to OCTO under his directives. 16. Gloor stated that he receives copies of the OCTO ticket which has a tracker and that they also memorialize their ticket requests to monitor when accounts are deprovisioned or reenrolled if needed. Tr. 16. Gloor identified Agency's Exhibit 12 as the offboarding guidelines. Tr. 17. He further cited that there were subsections in this document that described the deprovision process for emails. Tr. 19. He explained that the sections state that "access to all DCPS systems will be deprovisioned within three days of any employee's separation date, which includes access to their dc.gov email as well as their PeopleSoft access." Tr. 19.

Gloor identified Agency's Exhibit 13 as the receipt of the request for an account deprovisioning user account that was submitted on May 24, 2024. Tr. 20. He noted that the receipt was sent to Charron Stoutamire who is the person who submits the tickets and receives the confirmations. Gloor also identified Agency's Exhibit 4 as the confirmation of the closure of a ticket that would have been received by the coordinator confirming the deprovisioning of accounts. He affirmed that he would have received a copy of this notice. Tr. 21-22. Gloor cited that Agency's Exhibit 14 showed a timestamp of May 28, 2024, at 10:10:49 EDT indicating that Employee's email had been deprovisioned. Tr. 22.

On cross examination, Gloor cited that Employee's separation date was May 20, 2024. He was not sure when he received the notice of termination but affirmed that the separation date was May 20, 2024. Gloor explained that once they receive a notice of termination, his office inputs information and an automatic email is sent to all employees. Tr. 26. Gloor affirmed that this would have been sent to Employee's DCPS email address. Tr. 26. He further explained that it comes from an automated service that is used for all of their communications. Gloor testified that employees can access emails from a myriad of devices. Gloor did not know the last time Employee accessed his email, citing that it would be out of the scope of what he would have access to from an IT perspective. Tr. 27. Gloor affirmed that employees are expected to turn in their equipment when they separate from DCPS. Tr. 29. Gloor testified that he cannot see when an employee logs in or out of their dashboard. Tr. 30. Gloor cited that there are some dashboards he has access to, but not all. Gloor cited that there is not a written policy that governs the method of delivery to the employee of the offboarding policy. Tr. 33.

Ravikumar Krashnasamy ("Krashnasamy") Tr. Vol. 33. Pp. 33-47

Krashnasamy testified that he is a contract senior systems engineer in DCPS IT Office of Date and Technology. He has held that position for a little over three years. His responsibilities include Microsoft 365 user accounts, emails and internet servers in the data center. Tr. 35 - 38. Krashnasamy identified Agency's Exhibit 16 as a user account for Employee. Tr. 38. He identified a highlighted portion of the last login attempted by the user. Krashnaswamy also noted that the creation date for this account was December 29, 2021, at 4:35pm. Tr. 40. He cited that the account

reflects that it is currently disabled and that the last interactive sign in was March 31, 2025. He explained that an interactive sign-in is when a user tried to access the DCPS IT by typing in a name and password. Tr. 40. Krashnasamy testified that the last date someone signs on is preserved forever. Tr. 41. He testified that the last non-interactive sign in was June 13, 2024. He explained that this meant that the user did not type in his name and password but used an app to try and access the systems. Tr. 41.

Krashnasamy identified Agency's Exhibit 17 as the user account properties in directory servers in the users app. Tr. 42. He further cited that this was the properties for Employee. Tr. 42. He cited that this document had a deprovision request for offboarding for May 24, 2024. Tr. 43. He also identified Agency's Exhibit 18 as a directory service for Employee. Tr. 44. He cited that there was a modification made on May 28, 2024, at 10:10:55am. He cited that it was most likely the date that the account was disabled. He affirmed that this account was fully deprovisioned and the user cannot log in after that. Tr. 45.

On cross-examination, Krashnasamy cited that they could not identify who logged in on March 31, 2025. Tr. 45. He affirmed that on March 31, 2025, someone tried to access Employee's DCPS email account. Krashnasamy testified that a non-interactive sign in could be from a DCPS device or a personal device. He reiterated that an interactive sign in is when the user types in his name and password. A non-interactive is when he left the email app and tried to access the server. Tr. 47. He affirmed that he could not verify who attempted to log in with a non-interactive sign in on June 13, 2024. Tr. 47.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Summary of Agency's Position

Agency asserts that it had cause to terminate Employee from service and that it followed all appropriate laws, rules and regulations in administering the disciplinary action against Employee. Agency avers that on April 3, 2024, Employee was involved in a physical altercation with a school volunteer. Agency argues that Employee's actions reflected poor judgment and lack of self-control. Further, Agency contends that Employee's actions were "egregious and unprovoked" and were a hazard to the school community, including students and staff. Agency asserts that it appropriately terminated Employee pursuant to 5-E DCMR §1401.2 9 (s), "other failure of good behavior during and outside of duty hours that would affect adversely the employee's or the agency's ability to perform effectively."[9]

Agency cites that during the 2023-2024 school year; Employee worked at Coolidge High School ("Coolidge") as a behavior tech and also was a volunteer football coach. On April 3, 2024, Agency asserts that Employee initially became involved in a verbal exchange with another volunteer coach, Mr. Dion Senn ("Senn"). Agency maintains that this verbal exchange turned into a physical altercation between the two men. Agency argues that Senn's testimony and corroboration from the surveillance video footage of the incident, show that Employee "pulled a sharp [object] from his pocket." Agency also cites that the video footage reflects that Employee struck Senn twice in the face (with fists) while holding this object. After a security officer and other school staff separated the men, Agency asserts that Senn soon discovered that he was bleeding. Senn received treatment from

[9] Agency's Closing Argument at Pages 1-2 (August 15, 2025).

the Athletic Trainer, Mr. Mann. During this time of treatment, it was determined that Senn had a laceration on his left hand and a puncture wound to his left forearm. [10]

Agency notes that Principal Bright was made aware of the incident and also viewed the surveillance video footage. Agency avers that during her testimony, Bright noted that in her view of the video, she saw Employee "holding a small pocketknife in his hand as he punched Mr. Senn."[11] Agency maintains that Bright found Employee's behavior to be concerning and irrational, particular given that this occurred during school hours. As a result, she referred the matter for investigation and discipline. Agency notes that on or around May 3, 2024, it notified Employee that he would be terminated from DCPS. Agency maintains this action was warranted given Employee's actions on April 3, 2024. Agency cites that not only did Employee become involved in a physical altercation with a school volunteer, but he also used a weapon in this altercation which "subjected DCPS and the District of Columbia to liability." Agency avers that "there was no credible evidence that Mr. Senn threated the Employee or represented an imminent threat to him." Agency further argues that "[Employee] has exaggerated and mispresented material facts around the incident and key events that followed."[12]

Agency further maintains that Employee's actions on the day of the incident did not reflect someone in fear of imminent harm or danger. He did not report any issues to the security officers or otherwise. Further Agency argues that Employee challenged Mr. Senn "to take it outside" in front of a security officer.[13] Agency contends that the video footage clearly shows Employee walking out of the building first, turning around and "simultaneously retrieving the weapon that he would ultimately stab Mr. Senn with." Agency avers that "Employee would have this tribunal believe that this object was some tool on a multipurpose utility tool that he used in conjunction with his volunteer football coach position…[t]hat is inconsistent with the injuries that Mr. Senn sustained."[14] Agency argues that Mr. Senn was wearing three (3) layers of clothing when he was struck, so it "strains reason and common sense to suggest that a blunt object pierced through that many layers of clothing causing the resulting wounds and profuse bleeding that is documented in AX 3, 4, and 5."[15]

Agency maintains that it followed all applicable laws rules and regulations in its administration of the instance action. Agency iterates that Employee was terminated via Notice dated May 3, 2024. Agency contends that pursuant to the DCMR, "the Notice outlined the grounds for the termination, providing the reasons and basis in sufficient detail to inform Employee of the specific reasons for the adverse action, namely that he engaged in a physical altercation at school while holding a knife."[16] Agency avers that "Employee requested and was provided with the materials relied upon in reaching discipline on May 10, 2024." Agency cites that "Employee argued he did not receive these materials because he lost access to his DCPS email account in early May 2024, even though he emailed the request from his DCPS email address on May 10, 2024."[17] Agency cites that it provided testimony from the Office of Employee Services and DCPS technology that indicated that a request to "deprovision [Employee's] account was made until May 24, 2024, and the account was not deprovisioned until May 28, 2024." Agency avers that Employee could access

[10] Agency's Closing Argument at Page 7.
[11] *Id*.
[12] *Id*. at Page 8.
[13] *Id*. at Page 11.
[14] *Id*.
[15] *Id*. at Pages 11-12
[16] *Id*. at Page 12.
[17] *Id.*

his DCPS email account from any device, and as such, it "complied with the requirement to provide [Employee] with the materials relied upon in reaching discipline and his testimony that he lost access to his email account as of May 11, 2024, is not credible."[18]

To this end, Agency maintains that it had cause to discipline Employee, it followed all applicable laws and regulations and that termination was the appropriate penalty given the circumstances. Accordingly, Agency asserts that its termination of Employee should be upheld.

Summary of Employee's Position

Employee avers that it is undisputed that he was involved in an altercation with volunteer, Dion Senn. Employee asserts that there was testimony at the Evidentiary Hearing which indicated that "Mr. Senn had not gone through security protocols when he entered the building on the day of the altercation and that he entered the building through Door 16."[19] Employee argues that "per school policy, non-employee staff, including volunteers, must go through the front Fifth street entrance and go through weapons abatement."[20] Further, Employee asserts that "credible evidence of record shows that Senn has not passed a safety clearance to work with students…" Employee contends that on April 3, 2024, "he was working his duty post on the second floor around 2pm when he first saw Senn." Employee iterates that he testified that he "asked Senn what he was doing there because coaches are not permitted to come into the building while school is in session." Employee contends that Senn asked him to let him in to the Teachers' Lounge and that he saw that Senn had student athletes with him. Employee avers that he "advised Senn that students were not allowed into the teacher's lounge." Employee also asserts that he told Senn that staff had been reprimanded for allowing students in the lounge and "emphasized that Senn must [follow] that instruction."[21] Employee contends that Senn still allowed students into the lounge.

Employee cited that after he completed his dismissal duties that day, he was asked by Officer Johns to return a jacket to a student. Employee cited that he went to the atrium to give the student the jacket where he saw Senn. Employee asserts that he told Senn that if he could not "follow the rules and regulations of Coolidge High School that he should not come inside of the building until after school hours, which is the official policy for all coaches."[22] Employee avers that he "implored Senn not to break the rules." Employee asserts he was concerned "about his own job security given the five-day suspension he'd served based on a student's claim that he used unnecessary force against him after [Employee] was paged to a classroom for the student threatening a teacher."[23] Employee maintains that Senn responded and said to him "I don't know who the f__k you think your b__h ass talking to." Employee asserts that because he was preparing to leave to celebrate his birthday weekend, that he told Senn "that they could talk another day." Employee said that Senn insisted on talking now to which Employee responded, "that the two men could go inside the coaches' suite." Employee contends that as they were walking Senn said "I'll blow your ass up which is a street colloquialism for shooting someone."[24] Employee cites he noticed Senn "clutching something in his left pocket" while they were standing in front of the elevator. Employee iterates that he knew that Senn had not gone through security protocols, so he didn't know if he was armed.

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[18] *Id*. at Pages 12-13.
[19] Employee's Closing Argument at Page 1 (August 20, 2025).
[20] *Id*. at Page 2.
[21] *Id*. at Pages 2-3.
[22] *Id*. at 3.
[23] *Id*.
[24] *Id*. at Pages 3-4.

Employee asserts that as a trained mediator, he tried to "de-escalate Senn by telling him that he was trying to talk to him as a "man" without violent rhetoric." Employee avers that "Senn was not interested and continued to escalate matters."[25] Employee asserts that based on his own observations "he opted not to get on the elevator with Senn because he did not know if he was armed and Senn continued to threaten to bring him harm." As such, Employee avers that "he changed course from going to the coach's suite which was still inside of the building and instead said "let's take it outside.""[26] Employee maintains that he walked through Door 16 and went to the bottom of the steps and that Senn comes out on the top landing and "***descends down towards [Employee] with his left hand still inside of his pocket***." (Emphasis added in original). Employee avers that upon seeing this he "extends the tool that he keeps attached to his keys in case he has to defend himself." Employee notes that he "uses the tool to fix helmets and equipment for the football team while on the field." Employee further notes that he "swings with his left hand landing a punch on Senn's lower jaw while the tool is in his right hand." Employee cites that he then "swings with his right hand but doesn't quite land on Senn."[27] Employee contends that Senn "locks [Employee] in a hold around his neck and waist" and at some point "both men have each other in a hold and staff come [to] separate them."[28]

Employee further contends that it is "disputed who threatened who first." However, Employee avers that "it is undisputed that Senn went into the teacher's lounge with students and it is undisputed that Senn's actions were in violation of school policy."[29] Employee avers that Principal Bright "admitted that she had established a policy that teachers could not allow students in the teacher's lounge."[30] Employee also avers that Bright admitted she had not viewed any footage of the second floor "which would have captured Senn entering the teacher's lounge with the student."[31] Employe also contends that it is "undisputed that [Employee] spoke with Senn before he went into the lounge about not letting students in the lounge." Employee avers that Senn admits to this, albeit Senn said that Employee told him, "He could not walk around the school like he owned it." Employee avers Senn did not provide context for that remark. Further, Employee also asserts that it is "noteworthy that Agency did not produce evidence of the footage from the 2nd floor lounge to corroborate [Senn's] testimony that he did not let students in."[32]

Employee avers that in "weighing testimony, [Employee's] version of events is more credible given that he explained the origins of the conversation which is grounded in school policy, his concern that Senn was not cleared to be in the building in the first place and that he was in the building during school hours, which is also a violation of school policy, and that staff had been previously reprimanded for letting students in the lounge."[33] Employee also argues that "there is no testimony from any witness on the scene that [Employee] stabbed Senn." Employee also avers that Bright's testimony was "impeached regarding the "multiple" infraction she claimed [Employee] had, when in fact it was two, including the termination."[34] Employee also argues that "witnesses testified that there was no evidence of stabbing on the scene." Employee avers that witness did confirm that Senn was provoking him and yelling at him and that no witness said that he showed signs of being

[25] *Id*. at Page 4.
[26] *Id*.
[27] *Id*. at Pages 4-5.
[28] *Id*. at Page 5.
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*. at Page 6.
[33] *Id*. at Page 6.
[34] *Id*. at Pages 6-7.

injured. Employee argues that what the evidence shows is "that the two men tussled after [Employee] punched Mr. Senn in response to Senn threatening him."[35] Employee further maintains that "we did not see him lunge toward Mr. Senn or jab him with a knife as Ms. Bright testified."[36]

Employee avers that Officer Johns who was security for Door 16 "testified that not only did he not see [Employee] stab Senn, but that he was asked to falsify his statement by his superior officer, Sgt. Milton, to say he saw [Employee] stab Senn."[37] Employee also asserts that photographs provided by Mr. Senn show a puncture wound on his forearm and a small cut on his finger. Employee avers that "there were no time stamps on the photos so there is no evidence as to the date and time they were taken."[38] Employee also avers that the photo of Senn's sleeve "appears to show a very large amount of blood for such a small wound." Employee assert that Mann used "wound cleaning liquid" and that this could have "expanded the appearance of blood on the shirt." Employee also avers that Senn "could have tampered with the sleeve and used water or any liquid to cause the blood to expand even more by the time he took the photos."[39] Employee avers that the witness statements retrieved through the investigation "all paint Senn as the aggressor in the confrontation." Employee asserts that the Agency did not "introduce one credible witness to rebut this."[40] Further, Employee contends that Yvette Towe ("Towe"), the LMER representative, "who allegedly conducted the investigation testified that she did not personally conduct the investigation." Employee also argues that "Towe was unaware that, according to all witnesses, Senn came off as the primary aggressor in the confrontation and that his conduct made everyone feel unsafe."[41]

Employee also avers that he was not given the required notice regarding his termination. Employee asserts that the notice did not give him "until the effective date of his termination to turn in DCPS property in his possession." Employee avers that following the receipt of the notice, he was required to turn in his cell phone and laptop and once he did, he was no longer able to access his DCPS email.[42] Employee avers that "Agency presented a cookie cutter analysis in its memo recommending termination of an employee without conducting an adequate investigation." Further, Employee asserts that "Agency relied heavy on the video evidence but there was no audio and the entire incident was not captured by one camera." Employee avers that Agency could have done more to investigate what led to the altercation and, in failing to do so, violated the CBA.[43] Employee also asserts that Agency was flawed in its *Douglas* Factor analysis in his matter. Employee asserts that Agency did not give due consideration in this analysis. Employee asserts that in review of the seriousness of the offense that while this was aggravating it was not "highly aggravating" as there were "several mitigating factors within these circumstances that would explain [Employee's] actions."[44]

Employee asserts that he used his best judgment under the circumstances. Employee also avers that other factors should have been noted as mitigating or neutral. Specifically, Employee asserts that the "consistency of the penalty" factor would have been assessed as "mitigating at best or

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[35] *Id*. at Page 7.
[36] *Id*.
[37] *Id*.
[38] *Id.* at Page 8.
[39] *Id*. at Page 8.
[40] *Id*. at Page 9.
[41] *Id*.
[42] *Id*. at Page 11.
[43] *Id*.
[44] *Id*. at Page 12.

neutral at worst" if a thorough investigation had occurred. Employee asserts that he had to "defend himself while at work…and never contemplated he would be confronted by a fellow coach who was uncleared and had entered the school during instruction time without going through weapons and abatement in violation of school policy."[45] Employee also contends that Agency failed to show any evidence that termination was warranted in his matter.

Employee further maintains that he requested Agency, specifically LMER, to send all of the materials for his termination to his Gmail account. Employee avers that Agency failed to do so and that even though the notice was mailed to him, it did not include the video nor mention how he could access it. [46] Employee argues that Agency's failure to appropriately provide him with the notice and materials is in violation of the CBA and also with DCPS policies. Employee asserts that "given that Agency primarily relied upon video evidence, it was incumbent upon it to make sure [he] received it 15 days before his termination was effective." As a result, Employee asserts that his termination was improper, and he should receive all applicable relief and be reinstated to his position at DCPS.

ANALYSIS[47]

Whether Agency had cause for Adverse Action

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in *removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. *(Emphasis added).*

Additionally, DPM § 1601.7 provides that "[e]ach agency head and personnel authority has the obligation to and shall ensure that corrective and adverse actions are only taken when an employee does not meet or violates established performance or conduct standards, consistent with this chapter." Pursuant to OEA Rule 631.1 (December 27, 2021), Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Employee was terminated from service pursuant to:

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[45] *Id*.
[46] *Id*. at Page 14.
[47] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

> **Ground (s):** 5-E DCMR Section 1401.2 (v) Other conduct during and outside of duty hours that would affect adversely the employee's or the agency's ability to perform effectively.
>
> **Reason(s):** On or about April 3, 2024, you were involved in a verbal altercation with a colleague. During the verbal altercation you and your colleague exchanged challenges to resolve the conflict outside. You then exited the school, pulled out a knife from your pocket, and engaged in physical altercation with your colleague with the knife in your hand.
>
> This was not the first time you have been issued discipline. On February 7, 2024, you were issued a five (5) day suspension for the use of unnecessary force with a student."

It is uncontroverted that on April 3, 2024, Employee was involved in a verbal and physical altercation with a volunteer football coach while working at Coolidge High School. Witnesses to the physical altercation were comprised of staff members from the school, including teachers and Security Officer John who was on duty during the time the incident took place. It is also undisputed that the altercation involved Employee and Dion Senn, also known as "Coach Smurf." Further, it is clear that the altercation started as a verbal argument that ultimately resulted in Employee and Senn engaging in a physical altercation outside of Door 16 on the Coolidge High School property. There is also video surveillance evidence that shows the physical altercation between Employee and Senn on the day of the incident. Agency avers that based upon the video surveillance evidence, testimonies and the investigative report, that it had cause to discipline Employee. Agency also argues that Employee's claims that he was in imminent danger as it relates to the physical altercation is unfounded based upon the evidence in the record. Employee avers that he did not have a knife during the altercation but had a "tool" which he kept on his keychain for use for football equipment. Employee asserts that Senn should not have been on the school grounds and that he engaged with Senn after Senn made threats to him following his admonishment to Senn about allowing students into the teacher's lounge.

During the Evidentiary Hearing, I had the opportunity to consider witness testimony and examine documentary and video evidence regarding the incident. The video evidence serves as the clearest and most overwhelming evidence that Employee was involved in a physical altercation with Senn. Employee's arguments regarding the fact that Senn should not have been allowed in Door 16 on the day of the incident are irrelevant to the fact that Employee ultimately engaged in a physical altercation with Senn. Further, both Employee and Senn testified that they exchanged verbal words initially and were waiting by an elevator to "take it outside." The undersigned finds that there was ample opportunity for Employee to otherwise deescalate the situation and simply remove himself from Senn. Instead, both men decided to proceed outside where they ultimately engaged in a physical altercation. It is also clear in viewing the video evidence that Employee pulled a device – tool or otherwise and made contact with Senn with that device. It is also of note that Employee struck Senn first in the physical altercation that occurred. This noted, Employee's claims of fear of imminent danger do not align with the actions that can be viewed on the video surveillance. Likewise, Employee's ancillary arguments regarding whether Senn was cleared to be on campus and the weapons abatement procedures and policies do not amount to a defense to the verbal and physical altercation for which he was undisputably involved in.

Additionally, it should be noted that Employee was charged for "other conduct that would adversely affect the agency's or employee's ability to work effectively." Here, Employee's conduct clearly reflects an adverse impact, as this altercation caused a disruption on school grounds while students were still present. A reasonable mind can easily conclude that this would have an impact on not only the Agency, but also Employee's ability to do his job as required. As a result, I find that Agency has met its burden of proof to show there was cause for adverse action in this matter.

Whether Agency Followed Applicable Laws, Rules and Regulations

Employee avers that he was not provided with final notice information in the timeframe for which he requested, nor was it sent to the email address he requested. Employee further asserts that he was unable to access his DCPS email address, and as such, Agency failed to provide him with the appropriate notice pursuant to the Union CBA and otherwise. Agency asserts that it provided Employee with all the requisite materials and that Employee had access to the DCPS email address and could also have accessed the materials pursuant to the instructions provided in the initial notices to him. In the instant matter, I find that Agency's action did not run afoul of any provisions. While there may have been some delay in the receipt of the video surveillance, the testimony from the Evidentiary Hearing and the record reflect that Employee was able to access the notice materials. Further, I find that even if Agency's notice was deficient, this would amount to harmless error. The OEA Board has held that "… *an agency's violation of a statutory procedural requirement does not necessarily invalidate the agency's adverse action. Thus, the facts in this matter warrant the invocation of a harmless error review. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, this Board will apply a two-prong analysis: whether Agency's error caused substantial harm or prejudice to Employee's rights and whether such error significantly affected Agency's final decision to [discipline] Employee*."[48] In the instant matter, I find that the delay in the receipt of the video surveillance did not cause substantial harm or prejudice to Employee's rights. He was able to present a fully developed Petition for Appeal before this Office and was able to view the video in preparation for all proceedings before OEA. Further, Agency's decision to terminate Employee would not have been impacted by this delay. As a result, I find that Agency followed all applicable laws, rules and regulations in its administration of this adverse action.

Whether the Penalty Was Appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[49] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."

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[48] OEA Matter No. 1601-0093-10, *Opinion and Order on Petition for Review* (January 25, 2010).

[49] *See also. Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[50] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[51] To this end, I find that Agency appropriately relied on what it considered relevant factors outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching its decision to terminate Employee from service.[52] Employee argued that Agency's *Douglas* factor analysis was flawed, however the totality of the record does not support this contention. While Employee does not agree with Agency's determinations of the *Douglas* factors, there is nothing in the record to suggest that Agency failed to give appropriate consideration in its *Douglas* factor assessment in its administration of this action. Accordingly, based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no

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[50] *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[51] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

[52] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and it's relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

harmful procedural error. Consequently, the undersigned concludes that Agency's action of separating Employee from service should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee service is **UPHELD**.

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge