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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	OEA Matter No.: 1601-0169-13
HENRY ANGLIN, III,	)	
Employee	)	
	)	Date of Issuance: February 3, 2016
v.	)	
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Agency	)	
	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge
Edward Leyden, Esq., Employee Representative		
Lynette Collins, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

Henry Anglin, III, (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 27, 2013, challenging the District of Columbia Public Schools’ (“Agency”) decision to remove him from his position as a Teacher, effective August 31, 2013. Agency filed its Answer on October 30, 2013. I was assigned this matter on May 11, 2015.

A Prehearing Conference was held on July 14, 2015, to identify the factual disputes, and for the parties to identify potential witnesses and potential exhibits for an evidentiary hearing. Subsequently, an evidentiary hearing was held over the course of two days on October 19 and 21, 2015. Both parties presented documentary and testimonial evidence. Both parties also submitted written closing briefs. The record is now closed.

**JURISDICTION**

This 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 (termination) against Employee for “Grave misconduct in office, pursuant to 5-E DCMR § 1401.2(b);” and “Other failure of good behavior which is of such nature that it causes discredit to the employee’s agency or employment, pursuant to 5-E DCMR § 1401.2(s).”
2. If so, was the penalty of termination appropriate under the circumstances.

## BURDEN OF PROOF

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.<sup>1</sup> “Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

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.<sup>2</sup>

## CHARGES AND SPECIFICATIONS

Employee was removed for: (1) grave misconduct in office; and (2) other failure of good of good behavior which is of such a nature that it causes discredit to the employee’s agency or employment.<sup>3</sup> Specifically, Agency asserts that On January 24, 2013, after a game between H.D. Woodson girls’ basketball team and Ballou High School girls’ basketball team, Employee was involved in a physical altercation outside of Ballou High School that involved DCPS students, parents, and faculty. At the time, Employee was the coach of the H.D. Woodson girls’ basketball team. According to witnesses, during the altercation, Employee was seen hitting and kicking a parent of a DCPS student and had to be pulled off of the parent.

## SUMMARY OF TESTIMONY

On October 19 and 21, 2015, an evidentiary hearing was held before this Office. 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 Agency and Employee presented documentary and testimonial evidence during the course of the hearing to support their respective positions.

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<sup>1</sup> OEA Rule 628.1, 59 DCR 2129 (March 16, 2012).

<sup>2</sup> OEA Rule 628.2 *id.*

<sup>3</sup> Title 5-E, Chapter 14 of the District Municipal Regulations (“DCMR”), §§ 1401.2(b) and 1401.2(s).

## **Agency's Case-in-Chief**

### ***Mzindini Masimini ("Masimini")*** Tr. 14-100

Masimini is currently employed with Agency as the Director of Student Discipline. On January 24, 2013, Masimini was employed by Agency as the Dean of Students at Ballou Senior High School, where he was in charge of all discipline and safety issues. In this capacity, Masimini was also the point of contact for the Metropolitan Police Department ("MPD") and Agency's security vendor.

Masimini was working on January 24, 2013, during the girls' basketball game and recalled that the H.D. Woodson girls' basketball team arrived 7:15 p.m., around half time of the boys' basketball game. Masimini escorted the H.D. Woodson girls' basketball team to a classroom that they used as their locker room. There were approximately 12-15 girls on the basketball team and Masimini recalled being impressed with how they entered the facilities as they were in a single file line and they all had on a pair of pink Nike sneakers. Most of the team was dressed in black sweat suits and black city championship jackets. There were approximately four (4) adults with the team and Masimini assumed they were coaches in some capacity. Masimini met the H.D. Woodson girls' basketball coach (Employee) when he escorted the team to the classroom that would be used as a locker room.

The girls' basketball game ended close to 10:00 p.m. and afterwards a "very large fight" occurred in front of the building.<sup>4</sup> Agency's Exhibit 9 (also Employee's Exhibit 1) was used to describe the layout of the school and the parking lot, and the area where the fight occurred.<sup>5</sup> This diagram described the layout of the school as of January 2013.<sup>6</sup> When the girls' basketball game ended, Masimini and the security guards were clearing out the gym and he was standing at the door to the entrance of the building. As he was standing at the doorway, Masimini testified that there was "some kind of ruckus" happening between the H.D. Woodson's team bus and a vehicle parked behind the bus. The team bus was parked at the end of the walkway that began at the door where Masimini was standing. Masimini observed people rushing toward the car that was parked behind the bus and then he heard loud screams.

Masimini testified that members of the H.D. Woodson girls' basketball team rushed toward the vehicle parked behind the team bus. Masimini and a few security guards ran down the walkway toward the fight and by the time they got close to the car where the initial confrontation began, the fight had moved to the street in the area labeled "X" on Agency's Exhibit 9. Masimini did not initially know who was involved in the confrontation, however, he was later informed that the aggressors were K.H. and L.P (these are the initials of students involved in the fight), who were juveniles at the time of the incident.<sup>7</sup> These were former Ballou

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<sup>4</sup> Tr. vol. 1, at 19.

<sup>5</sup> Agency's Exhibit 9 and Employee's Exhibit 1 are attached to the end of this Initial Decision to assist the reader in understanding the layout of the events described throughout this Decision. Employee's Exhibit 1 is a derivative of Agency's Exhibit 9.

<sup>6</sup> The layout of the school has since changed.

<sup>7</sup> K.H. are the initials of Kwanza Hall, who testified at the evidentiary hearing. Throughout the written record, many of the students are referred to by their initials since they were juveniles at the time of the incident. To preserve the

students who had transferred to H.D. Woodson, and were on the H.D. Woodson girls' basketball team the previous year. Masimini was told that K.H. and L.P. assaulted O.B. (also a juvenile at the time of the incident). Masimini was told that O.B. was in her stepfather's car which was parked behind the H.D. Woodson team bus, in the passenger seat, when she was first assaulted.

Masimini was able to identify that members of the H.D. Woodson girls' basketball team were involved in the assault on O.B. because of their city championship jackets and their pink Nike sneakers, although he stated that the scene was dark. He did not know the H.D. Woodson students by names or faces. Masimini was able to identify some people involved in the fight: some were not students; one person in particular that he was able to identify was A.W. (student initials) because she was a Ballou student, and two young men. Masimini also observed a Ballou student, L.J., attempting to push people away from O.B. as she was on the ground and being kicked. When Masimini got to the other side of the street where the fight had spread, and what he described as a "fairly large group," he began to move people away from the young lady on the ground. There was also at least one security guard that was attempting to assist Masimini in gaining control of the situation. Masimini identified Ebony Redman as the security guard closest to him. Although Masimini stated that he recalled seeing some other security guards on the scene, he could not recall their names.

During the commotion, Masimini heard a scream and immediately afterwards heard someone yell, "he just stole [R]," meaning that someone had just hit "R." Subsequently, the group began to dissipate and Masimini turned around and saw an older gentleman in the middle of 4th Street being chased by a group of individuals. As this was happening, Masimini was attending to O.B. When Masimini looked back, the older gentleman was against the gate in between the bus and the truck parked directly behind it. Masimini later learned that the gentleman was O.B.'s stepfather. When Masimini went over and began to move people away, the gentleman ran to his car. Members of the H.D. Woodson basketball team began to kick the headlights, grill, and side mirrors of the gentleman's car. At this point, Masimini heard another scream from the middle of the street and went on the other side of the vehicle and there was more commotion surrounding O.B. At this point, Masimini testified that he saw the passenger side door of the vehicle open and a man in a gray hooded jacket throw two or three punches and pull the father out of the vehicle. Masimini was five to six feet away when he saw the man in a grey hooded jacket throw punches at O.B.'s stepfather. Masimini approached the car door and pulled the gentleman off who was fighting with O.B.'s stepfather. When Masimini pulled the gentleman off the stepfather, the gentleman's hood came off. Masimini identified the man as the head coach of the H.D. Woodson's girls' basketball team (Employee). Masimini recognized Employee from the grey jacket he had on when the team first entered the building. Masimini looked at him and stated, "what the fuck are you doing?" Masimini also testified that there was a student manager who was kicking the father while the father was on the ground. After Masimini pushed back both gentlemen, the father got back into the car, and by this time O.B. was in the back seat of the car. The vehicle then sped off.

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privacy of these juveniles, the students' initials will also be used throughout this Decision, despite their actual names being used by witnesses during the evidentiary hearing.

Shortly afterwards, the Principal of Ballou, Mr. Branch, and a few others had arrived on the scene. The police arrived sometime thereafter. Masimini provided the police with a report of what occurred and called the Dean of Students from H.D. Woodson to explain what happened when he got home around 11:30 p.m. That same night he sent an e-mail to the Instructional Superintendent, the Principal, the Chief of Agency's security, and the Athletic Director detailing the events. The e-mail Masimini sent is included as part of Agency's Exhibit 3. Masimini testified that he was "positive" that he saw Employee punch the father of the student who was being assaulted.

Masimini is familiar with Nawasa Cockrell ("Cockrell"), a parent of one of the students injured in the fight, from when she worked for him at Ballou High School. Masimini's relationship with Cockrell was positive until Cockrell was subject to a Reduction-in-Force ("RIF"), and the relationship became strained during the last six (6) weeks Cockrell was employed at Ballou.

On cross-examination, Masimini further testified that the young lady who was assaulted (R.R.)<sup>8</sup>, looked like she had been punched in the eye, and suffered a black eye.<sup>9</sup> Masimini recalled that a Ballou student yelled out that the stepfather of O.B. struck "R." Masimini considered L.J. and O.B two Ballou students who were victims in the fight.

Masimini attempted to make a phone call to Mr. McDonald, the stepfather of O.B., but was unable to get in contact with him. McDonald's statement was identified as Agency's Exhibit 7.

As part of Masimini's duties, he typically acted as the liaison between the security vendors and Agency. In this instance, he did not act as a liaison because he was a part of the investigation into the incident. The Metropolitan Police Department also conducted a parallel investigation along with Agency's internal investigation.

There were cameras set up around the school although a few were inoperable on the night of the incident. However, Masimini stated that none of the inoperable cameras were in a position to capture the fight and none of the cameras located on the premises captured the incident. There were two cameras from different angles on the side of the school where the incident occurred. One camera angle was from the auditorium, which is labeled on the bottom right corner of Agency's Exhibit 9. There was also a flagpole in front of the camera. The cameras had approximately a 20 to 40 foot range, and could not capture images beyond 40 feet. Because it was dark outside, Masimini stated that the camera on the outside of the auditorium was "almost all the way black."<sup>10</sup> There was also a camera located on the front door, labeled "D" on the bottom of Agency's Exhibit 9. The distance between the front door and the street where the fight occurred was approximately 40 feet. The camera on the front door could only detect shadows. From this camera angle you could only see the bus parked alongside of the street, but could not see the people involved in the incident.

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<sup>8</sup> Later identified as the daughter of Cockrell.

<sup>9</sup> For purposes of this decision, "R.R" and "R" are used to identify the same person.

<sup>10</sup> Tr. vol. 1 at 74.

***Geneva Couser (“Couser”) Tr. 100-146***

Couser is currently an Investigator with Agency in the Office of School Security and has been with Agency for more than eleven (11) years. Prior to working with Agency, Couser was a Police Officer with MPD for twenty-nine (29) years. With MPD, Couser spent significant time investigating rapes and child sex abuse cases. She has training in interviewing, interrogation, and investigations.

In her current role, Couser serves as an Administrative Investigator where she investigates Agency employees for their conduct. Couser was involved in the investigation of Employee regarding the incident that led to his termination. After receiving the assignment to investigate Employee, Couser went to the school and spoke with Security Officer Redman and different people who were on the scene, including: Masimini, the complainant who was assaulted (Mr. Leonard McDonald), and several members of the girls' basketball team.

Couser's investigative report was entered into evidence as Agency's Exhibit 2.<sup>11</sup> Security Officer Ebony Redman's written statement was introduced as Agency's Exhibit 4. The statement of the female student (O.B), who was the stepdaughter of the male adult (Mr. McDonald) who was assaulted, was introduced as Agency's Exhibit 5. Agency's Exhibit 7 is a statement written by Mr. McDonald, the victim of the assault was also entered into evidence.

Couser concluded in her investigation that Employee's behavior was not what was expected of an Agency employee and also found many of the statements given by H.D. Woodson's players not credible because she felt that they were protecting their coach.

Couser described the investigation process with Agency's internal investigative arm and the parallel investigation conducted by MPD. The statement provided by Mr. McDonald (Agency's Exhibit 7), was provided to Agency's investigative team, and once Couser was assigned the case, she was provided a copy of the written statement.

***Erin Pitts (“Pitts”) Tr. 147- 168***

Pitts is currently the Deputy Chief of Labor Management and Employee Relations for Agency. She has been with Labor Management and Employee Relations for approximately four and a half years serving in different capacities. In her current position, Pitts reviews investigative reports, issues adverse actions, ensures that progressive discipline is appropriately administered, reviews union grievances, and handles equal employment opportunity claims. Pitts reviewed the investigative report in the instant case, and along with the committee that reviews discipline, made the decision to terminate Employee. Pitts also issued the Notice of Final Termination to Employee, which was entered into evidence as Agency's Exhibit 1.

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<sup>11</sup> Agency's Exhibit 2 is the analysis portion of Couser's Investigative Report. Some of the exhibits referenced in this report are included as separate Agency Exhibits. Some of the exhibits referenced in the Investigative Report are not included as exhibits by either Employee or Agency. The Investigative Report in its entirety, including all exhibits and attachments, appear to be included as attachments in Employee's Petition for Appeal.

Employee had no prior disciplinary record prior to the instant matter. Pitts stated that it was the nature and seriousness of the offense that led to Employee's termination. Pitts believed that the investigative report was the best evidence to rely upon in making the decision to terminate Employee and that the issue fell on credibility. Pitts found Masimini's version of events most credible and felt that he did not have a vested interest in the matter; whereas the players on Employee's team who were interviewed had an interest in his well-being.

On cross-examination, Pitts stated that she did not personally interview any of the individuals who had provided statements. However, Pitts spoke with Investigator Couser and Security Officer Barnes. Pitts testified that it would not have made a difference in the outcome of Employee's employment if he was criminally prosecuted or indicted. She felt that the evidence gathered through the course of the investigation was sufficient enough to remove Employee from his position. Pitts did not personally interview Masimini regarding the events in this matter, but has had plenty of interaction with him. Pitts did not believe that Security Officer Barnes ever provided a written statement regarding the events.

On re-direct, Pitts stated that Barnes told her that she (Barnes) did not see Employee hit the parent and spoke about there being several fights going on at the same time. Pitts stated that Barnes statement was not helpful and that the scene was described as chaotic and dark.

### **Employee's Case-in-Chief**

*Laray Barnes ("Barnes")* Tr. 169-210

Barnes is currently employed by the Department of Homeland Security as an Operations Specialist. Prior to working with the Department of Homeland Security, Barnes was a Special Police Officer with Agency, which entailed checking buildings, and ensuring the safety of the students and school buildings.

On January 24, 2013, Barnes was assigned to Ballou Senior High School where she was responsible for observing and making sure there no fights occurred during the basketball games. Barnes recalled when the H.D. Woodson girls' basketball team left the gym they all had on pink Nike sneakers, their varsity jackets, and some had on their sweat suits or their uniforms. Barnes met the team and Employee in the lobby of the school and escorted them out of the building to the team bus. The students were talking and cheering as she escorted them.

As the team approached the bus, she heard some noise coming from the other side of the bus and saw a fight happening across the street. Barnes observed the location of the fight in the area labeled "X" on Agency's Exhibit 9 (Employee's Exhibit 1). Barnes did not recognize anyone in the fight and stated that those involved had on black clothes and hoods. The fight was described as "a pile of kids on top of each other" that were kicking and punching and involved approximately 30 to 40 kids.<sup>12</sup> Barnes did not observe what Employee was doing at this point.

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<sup>12</sup> Tr. vol. 1 at 179.

Barnes recalled that an SUV-style vehicle was a few yards behind the team bus and that it pulled off about five (5) minutes after the fights started. Barnes also recalled a fight involving four or five people taking place by the vehicle and that an H.D. Woodson female student was on the ground being stomped. After the fight, the gentlemen driving the vehicle jumped in and sped off. When Barnes noticed the gentlemen driving the car parked behind the bus, he was dragging a child and putting her into the car.

Barnes attempted to break up the fight across the street on 4<sup>th</sup> Street and recalled that Employee was a couple yards away from her toward the median of the street and that he was telling the girls on his team to go back across the street back toward the bus. Barnes never saw Employee interact with the gentlemen who was driving the car parked behind the bus. When the gentleman drove away, Barnes realized that one of the girls was injured and called MPD. After the car parked behind the team bus drove off, there was no more fighting, although people were still arguing. Barnes recalled that Employee was directing his girls to get on the bus.

Barnes was familiar with Masimini and knew that he worked at Ballou although she had never had an encounter with him. Barnes observed Masimini outside of the school “once the fight broke out” on the same sidewalk as the bus.<sup>13</sup> Barnes did not see Masimini engage with Employee while they were outside.

The morning after the incident Barnes gave a written and verbal statement. Barnes spoke with an investigator from DCPS but could not remember her name (Barnes was presumably referring to Investigator Couser since she said she saw her earlier in the day). She did not give a written statement to the Agency investigator. Barnes did provide a statement to Mr. Sony Hennitt, who was the Acting Director of Agency’s security branch at the time. During Barnes’ interview with Couser, they did not discuss Employee.

On cross-examination, Barnes stated that she knew Employee because prior to working for Agency when she was a contract guard and she floated around to all of the school in Northeast, Washington, D.C. Employee worked at Ron Brown Middle School and Barnes circulated to that particular school a lot. She initially met Employee around 2006-2007 and has seen him a couple of time since 2013.

*Nawassa Cockell (“Cockrell”) Tr. 212-252*

Cockrell’s daughter (“R”) was a member of the H.D. Woodson High School girls’ basketball team and was in attendance at the game on January 24, 2013. Cockrell recalled that after the game she was waiting in the area outside of the gym while Employee spoke to his players. Afterwards, Cockrell and her family walked out of the main entrance of Ballou High School down the walkway toward the team bus and made a left at the end of the crosswalk toward their car. Her daughter “R,” who played for H.D. Woodson’s girls’ basketball team, was with her as she was walking toward her car. As Cockrell was getting in her car she heard some commotion and witnessed a gentleman stomping a young lady on the ground. The commotion that Cockrell observed was happening at the car parked directly behind the team bus on the

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<sup>13</sup> Tr. vol. 1 at 189-190.

passenger side of the car. Cockrell recognized the individuals involved in the commotion as a current and former student of Ballou.

When Cockrell looked toward her car, she saw her daughter in the middle of the street staggering and looked as if she had been struck. The location of Cockrell's daughter was labeled "R" on Employee's Exhibit 1. Cockrell was told by witnesses that a man had struck her daughter. Someone pointed out the gentleman who they said hit "R." The gentleman is identified with a "G" on Employee's Exhibit 1. Cockrell described the scene as dark and stated that it looked like a bunch of kids were chasing the gentleman and swarming and beating him up. At this point, Cockrell said that she went back toward her car to check on her daughter. When Cockrell told Employee that her daughter got hurt, he came over to check on her daughter.

Cockrell remembered seeing Masimini inside of the building during the basketball game, but did not recall seeing him outside after the game until the fights were over and things had calm down. Cockrell also did not see Employee have any interaction with the gentleman labeled in Employee's Exhibit 1 "G." Cockrell gave a statement to MPD approximately a week or so after the incident.

Cockrell was a former employee at Ballou High School, but was subject to a Reduction-in-Force ("RIF") in 2012. Cockrell received a letter of recommendation from Masimini following the RIF and described her relationship with Masimini as a "working relationship."<sup>14</sup>

On cross examination, Cockrell stated that her daughter began playing for Employee in the seventh (7<sup>th</sup>) grade. After Employee was terminated from Agency, Cockrell's daughter eventually went to play for him at a different school where he began coaching. Subsequent to being RIF'd, Cockrell relocated to Georgia to stay with family, but eventually moved back to the Washington Metropolitan area because her daughter wanted to play basketball for Employee.

When Cockrell noticed Masimini outside of the building, he was on the sidewalk against the fence, which is labeled "gate" on Employee's Exhibit 1, along with Principal Branch. She recalled that Masimini approached her after he realized her daughter was injured and asked her something to the effect of how she wanted to proceed. Cockrell did not see Employee speak to anyone at her car other than the people who were inside. She never saw Employee talk to Masimini.

***Robeena Huey ("Huey")*** Tr. 254-279

Huey's daughter currently plays basketball for Employee. Huey's daughter also played for Employee when he coached at H.D. Woodson in January of 2013. Huey was at the basketball game on January 24, 2013, at Ballou High School. After the basketball game, Huey waited in the hallway for her daughter's team to come out. Huey walked out of the building with her daughter and the rest of the girls' basketball team. They walked out of the main entrance down the walkway toward the team bus and she was parked in the staff parking lot on the left of Employee's Exhibit 1. A majority of the parents and the kids went to the left of the Exhibit.

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<sup>14</sup> Tr. vol. 1 at 235.

As Huey and her daughter were walking toward the left, as laid out in Employee's Exhibit 1, in the direction toward the back of the bus, they heard commotion occurring on the other side of the bus in the area labeled "G." Huey stated that she grabbed her daughter and goddaughter so that they would not go over to the commotion. The three of them stood and watched from the sidewalk.

Huey described the incident as several kids fighting and arguing. Because it was very dark, Huey could not identify any of the children who were fighting. Huey recalled that Employee was near the front of the bus during this time. When Employee realized that a fight had broken out, he came around the bus to see if any of his players who had walked off with their parents were involved. Huey estimated that she was approximately 20-30 feet way from Employee. While observing the fight, Huey saw "R" fall down, although she did not know what caused her to fall. Huey provided aid to "R" after she fell. Huey did not see Employee after she went to render aid to "R" until Employee came over to check on "R."

Huey called the police and told them that a brawl was occurring at Ballou High School. After the incident, Huey recalled speaking to a male investigator but could not remember his name. She did not recall speaking with anyone from Agency, but she did send an e-mail recounting the incident. At no time did Huey see Masimini interact with Employee outside.

***Ana Maria Entzminger ("Entzminger")*** Tr. 280-294

Entzminger's daughter played for Employee at H.D. Woodson. She was at Ballou High School on the evening of January 24, 2013 for the girls' basketball game. Entzminger arrived to the game, along with her mother and two younger children. When the game was over and the girls came out of the locker room, the team and some of the parents walked outside in a group down the walkway toward the bus. Entzminger was parked in front of the team bus so she turned to the right (of Employee's Exhibit 1) to go to her car. After she buckled her two younger kids in, she saw her daughter, walking back past the bus, to the left of Employee's Exhibit 1. At this time, Entzminger also noticed the commotion in the street and went to grab her daughter and told her to "get over here." She stated that most of the commotion was occurring around the "X" and the "G" on Employee's Exhibit 1. Entzminger saw Nawassa Cockrell attending to her daughter "R," who had been struck in the eye.

As the fights started to die down, Entzminger recalled seeing Employee and another coach trying to get the girls back on the bus. About a week after the incident, she gave a statement to a detective with MPD at the Seventh Precinct. Entzminger did not have any encounters with anyone affiliated with Agency.

***Kwanza Hall ("Hall")*** Tr. Volume II, 4-5, 110-157

Hall was a former student at Ballou High School at the time of the incident. She attended Ballou from ninth (9<sup>th</sup>) through eleventh (11<sup>th</sup>) grade, and finished her twelfth (12<sup>th</sup>) grade year at H.D. Woodson in 2011. Hall was in attendance at the basketball game on January 24, 2013.

Hall testified that at some point during one of the basketball games, her friend, L.P., and O.B. (an H.D. Woodson student) bumped into each other. Hall's friend (L.P.) and O.B. exchanged words and O.B. told L.P. to, "see me after the game." Hall understood this to mean that O.B. wanted to fight L.P. Hall advised her (L.P.) to "leave it alone." While the game was still going on, Hall went to the concession stand and saw O.B. while she was out there. Hall stated that she also told O.B. to "leave it alone."

Hall recalled walking out of the building after the game, and O.B.'s girlfriend stated that she heard one of them (Hall and/or L.P.) had a problem with O.B. Hall did not know O.B.'s girlfriend's name. Hall stood where the "K" is labeled on the Employee's Exhibit 1 while she was speaking with O.B.'s girlfriend. Hall responded, "I'm grown. Your girlfriend is in high school. I don't have no problem with her (sic)." Hall continued to walk on the sidewalk (to the left of the Employee's Exhibit 1) while L.P. stood there and continued to exchange words. Hall walked back toward her friend, L.P., when she saw O.B. come out of the building to make sure that L.P. did not get jumped. They then walked to where the vehicle was parked behind the team bus. Hall knew that the truck belonged to O.B.'s stepfather. At this point, L.P. and O.B. started fighting. Hall stated that a guy named Lance jumped in the fight and hit L.P. Hall then intervened and stated that Lance also slammed her.

The stepfather then got out of the vehicle and hit a person who was standing by the fight, whom Hall identified as R.R. Hall then grabbed the stepfather and the stepfather started punching her (Hall). This particular fight occurred by the back of the stepfather's vehicle on the driver side (labeled with "C" with a circle around it). Hall recalled that a bunch of boys also intervened in the fight and started fighting the stepfather. Hall did not know any of the boys involved in the fight, although she believes her friend L.P. knew them.

Hall saw Employee during the fight and observed him trying to get people to leave the scene. Hall did not speak with the police or anyone from Agency regarding this incident.

***Craig Gilbeaux ("Gilbeaux")*** Tr. Volume II, 11-48

Gilbeaux works at H.D. Woodson as an Assistant Basketball Coach for the girls' basketball team. Gilbeaux works full time for the Department of Justice as a telecommunications manager. Gilbeaux was at Ballou High School on January 24, 2013, for the girls' basketball game. After the game, the girls gathered in the locker room and then in the hallway to walk the team out to the bus. Gilbeaux recalled that a couple of the girls went home with their parents. Gilbeaux testified that a fight broke out after the game as the team was walking to the team bus. Gilbeaux testified that about 12 or 13 girls were on H.D. Woodson's girls basketball team.

Gilbeaux was at the front of the line as the team walked out of the building. "R" was ahead of the line further up the street/sidewalk since she was leaving with her family. As the team was walking out, Gilbeaux heard someone yell, "someone hit [R]."<sup>15</sup> Gilbeaux looked down the street, to the left side of Employee's Exhibit 1, after he heard someone yell, "someone

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<sup>15</sup> Tr. vol. 2 at. 16

hit [R].” When he looked down the street he observed “R” on the ground and a guy running away from her. Gilbeaux recalled that two or three girls who were not a part of the team walking alongside them as they were walking down the sidewalk toward the bus. Once they got to the car parked behind the bus, people jumped out of the car and a fight started. The fight also spilled onto 4<sup>th</sup> Street and Gilbeaux was trying to pull people away from the fight. Gilbeaux described the scene as “mayhem everywhere.”

Gilbeaux recalled that Employee was behind him talking with some parents and that when the fight broke out Employee ran over to him to ask what was going on. At this time, Gilbeaux and Employee started looking for their players to make sure they got on the bus. While all of this was happening, Gilbeaux recalled seeing Employee by the bus, who was telling him to “come on.”<sup>16</sup>

Gilbeaux did not recall seeing anyone outside of Ballou in authority except for the female security officer. Gilbeaux believed an “older guy” was the perpetrator in this instance. Gilbeaux did not see Employee interact with the older gentleman.

Gilbeaux spoke with a counselor from Agency the next day and also spoke with an MPD investigator several days after the events. Gilbeaux provided a written statement, via e-mail, to Investigator Crouser on May, 22, 2013, memorializing the events as he remembered. (Agency Investigative Report, Exhibit 13).

***Roy Jordan (“Jordan”)*** Tr. Volume II, 48-73

Jordan’s daughter attends H.D. Woodson and Employee was at some point his daughter’s basketball coach. Jordan was at Ballou High School on January 24, 2013, attending the girls’ basketball game. After the game, Jordan recalled waiting for the girls’ team to come out as they waited in the front hallway at the front entrance of the school. As the team was walking toward the bus Jordan was talking to Employee. As he was talking to Employee, they heard a lot of commotion which he described as screaming, yelling, and loud noises in argumentative voices. The noises were coming from behind the bus, on the left of Employee’s Exhibit 1, in the area of the “G.” Jordan stated that he, his daughter, and Employee walked toward the commotion and saw a melee, which involved kids/students and adults. Jordan observed the fight in the area labeled “G” on Employee’s Exhibit 1.

Jordan was familiar with Masimini’s face because of his visible appearance at a lot of events which he attended. While Jordan could not call him by name, the description Jordan gave matched the physical description of Masimini. Jordan recalled seeing Masimini was when he was trying to get people to exit the building. The next time he recalled seeing Masimini was when all of the girls were on the team bus and MPD arrived on the scene. Jordan recalled that he saw Masimini coming from the far right of Employee’s Exhibit 1. Jordan did not observe Masimini interact with Employee that night.

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<sup>16</sup> Tr. vol. 2 at 25.

On cross-examination, Jordan testified that after Employee was terminated by Agency and went to coach at another school that his daughter also transferred to the school where Employee began coaching.

***Michal Grey (“Grey”)*** Tr. Volume II, 74-104

Grey served as an assistant coach with the H.D. Woodson girls’ basketball team for one (1) year. He was at the game on January 24, 2013, as a coach. After the game, as the team walked out of the building toward the team bus, most players left with their parents, and about two or three players, along with some team managers and Gilbeaux were getting on the team bus. As the players were getting on the bus, Grey said that they noticed a “brawl or melee” occurring on the opposite side of the street in the area labeled “X” on Employee’s Exhibit 1. There were approximately 11 to 20 people involved in the melee. Grey, Gilbeaux, and Employee went to make sure that none of their players were involved in the fight. After they went over to try to break up the fight, they determined that none of their players were involved. As they were leaving the area of the fight, they saw Cockrell crying and she stated that someone had hit her daughter (“R”). They initially encountered Cockrell in the area labeled “C” on Employee’s Exhibit 1. Grey and Employee were attempting to calm down Cockrell and were assisting to get “R” into her mother’s (Cockrell’s) car.

As soon as the fight was over and the remaining coaches and players got on the bus, Grey received a phone call from the Assistant Principal of H.D. Woodson, Ronald Cureton, who told him that Dean Masimini had called him about the incident. Initially, Grey did not know what Masimini looked like; however, when he was later told what Masimini was wearing that evening, Grey stated that Masimini was not outside during the time of the incident. Grey recalled seeing Masimini when the team arrived at the game because he recalled that Masimini had on a white kufi hat. Grey only recalled seeing one security officer, who was in uniform, outside as the fight was occurring and did not recall seeing anyone from Ballou’s staff outside assisting in breaking up the fight. Grey did not recall seeing the gentlemen whom he described as wearing the white kufi hat (Masimini) have any interactions with Employee.

Grey provided a statement to the Assistant Principal of H.D. Woodson, Ron Cureton, and MPD. He did not recall speaking with anyone from Agency, other than his principal the following day about the events that unfolded.

On cross-examination, Grey stated that Gilbeaux had already pulled off at the time Employee and Grey were at the vehicle assisting Cockrell and “R.” Prior to Gilbeaux pulling off, Grey stated that he, Gilbeaux, and Employee were all in close proximity where they could see each other.

***Brown Henry Anglin (“Employee”)*** Tr. Vol II. 157-206

Employee first became employed with Agency in 2003, initially as a substitute teacher, and eventually obtained a full-time teaching position as a health and physical education teacher. Employee joined the staff at H.D. Woodson in 2004, and became the head girls’ basketball coach in 2012.

Employee was at Ballou High School on January 24, 2013, for the girls' basketball game. His team arrived around half-time of the boys' basketball game, which was right before the girls' game. There were approximately eleven (11) girls on the team, two managers, a dean of students, and two coaches who rode the team bus that evening. Employee recalled that when they arrive at Ballou, they were directed into a classroom which the team used as a locker room.

Employee wore slacks and his coach's shirt to the game. Employee stated that he likely had on a coat that evening too because it was a cold night. When the team initially arrived at Ballou, the team met Masimini who escorted them to the room that they used as a locker room. Prior to that evening, Employee had never met Masimini. Employee's team won the game by a considerable amount, and after the buzzer, it was "business as normal" and the teams shook hands. After meeting in the locker room, the team assembled in the lobby area of Ballou where Employee spoke briefly with his team and parents before exiting the building. Employee allowed the students whose parents were at the game, to leave with their parents, and the remaining students were escorted out of the building with the coaches.

As the team was leaving the building, Employee was dealing with a situation regarding one of his players and speaking with that player and her mother by the front door of the building (labeled "D" on Employee's Exhibit 1). The team was escorted out of the building by security officer Barnes, whom Employee had known previously since she also served in a security capacity at other games that Employee coached. As Employee was having a conversation with one of his players and her parents, he said the conversation was interrupted by people screaming and "scrambling around the streets." Employee initially observed people in the street in the area labeled "X" on Employee's Exhibit 1.

Once Employee observed the commotion he went toward the action to see what was going on. The route Employee took to the fight is indicated by the dotted line drawn from the "D" on Employee's Exhibit 1. Employee recalled passing Gray and Gilbeaux en route toward the commotion and asking them what was going on. Employee recalled that "fights were all throughout the entire street."<sup>17</sup>

When Employee was trying to break up the fights, he also saw Gilbeaux and Cockrell in the mix of the crowd. Employee was concerned that some of his players may have been involved in the fight. Gilbeaux told Employee that "R" had been hit, at which point Employee went to look for "R." Employee stated that "R's" mother was hysterical at the time. He tried to get Cockrell and the other players away from the action. After Employee saw "R" "semiconscious," he helped her get to her mother's car, which was parked in the area labeled "V" on Employee's Exhibit 1.<sup>18</sup> As Employee was assisting "R," the police arrived. Employee tried to get Cockrell to calm down and talk to the police. Eventually the principal from Ballou came outside and was trying to figure out what happened.

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<sup>17</sup> Tr. vol. 2 at 173

<sup>18</sup> Tr. vol. 2 at 181.

Employee did not interact with the man who was described as driving the car parked behind the team bus and hitting “R.” Employee stated that he was probably 15 feet away from this gentleman when witnesses first pointed him out in the middle of the fight. Employee stayed at the scene of the fight until everyone left, including the police. Employee spoke with the police when they arrived on scene and stayed for about 15-20 minutes. Employee recalled seeing Masimini before the game, possibly during the game, and in the building as the team was leaving, but did not see him outside while the fights were occurring.

While on the bus headed back to H.D. Woodson, Employee’s first call was to Ms. Stephanie Evans, who is in charge of athletics for Agency, to inform her of what happened. Employee also called Lucretia Gray, the Athletic Director for H.D. Woodson while on the bus. Shortly afterwards, Stephanie Evans called Employee back and stated that Masimini had told her a different version from what he stated. Ms. Evans told Employee that she was informed that the H.D. Woodson girls were the ones fighting and causing the chaos and that he (Employee) was involved in the fight. Employee described this version of events as “absolutely untrue.”<sup>19</sup>

Within a week of the incident, Employee was placed on administrative leave while an investigation into his conduct was carried out. Approximately three or four months later, Employee spoke with Investigator Couser about the incident. In August of 2013, Employee was taken off of administrative leave and removed from his position with Agency. Employee did not have any conversations with law enforcement personnel after the night of the incident. No charges were brought against Employee in relation to the events on January 24, 2013.

On cross-examination, Employee testified that of the eleven girls that were on his team at H.D. Woodson, five were seniors. Out of the six underclassmen, probably five of them went to play under Employee when he began coaching at a school in Prince George’s County. “R” was one of Employee’s players at H.D. Woodson who followed him to his new position.

### **Agency’s rebuttal witness**

***Rahman Branch (“Branch”)*** Tr. Vol II, 207-229

Branch was the Principal at Ballou High School in 2013, and was working on January 24, 2013. After the game, as Branch was exiting the school from the north parking lot in his vehicle (on the left side of Employee’s Exhibit 1), he observed a “melee.”<sup>20</sup> Branch saw “a tussle between children in the street and two adults by a car.”<sup>21</sup> Branch stated that “[o]ne person was clearly not out of the car, and the other person was fighting with them at the car.”<sup>22</sup> Branch was unable to identify the adults, but could tell that they were two adult males. Branch got out of his car and went to where the children were fighting around the “X” and “F” on Employee’s Exhibit 1 because they were his main concern.

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<sup>19</sup> Tr. vol. 2 at 193.

<sup>20</sup> Tr. vol. 2 at 209.

<sup>21</sup> Tr. vol. 2 at 211.

<sup>22</sup> Tr. vol. 2 at 212.

Branch witnessed “R” suffer a “pretty bad punch” to the face by another kid and then began to separate the kids who were in the street fighting.<sup>23</sup>

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

#### Whether Agency’s adverse action was taken for cause

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.

Title 5-E, Chapter 14 of the District Municipal Regulations (“DCMR”), §§ 1401.2(b) and 1401.2(s), provide that “just cause for adverse action” may include, grave misconduct in office and other failure of good behavior during duty hours which is of such a nature that it causes discredit to the employee’s agency or employment, respectively. Employee’s termination was based on DCMR §§ 1401.2(b) and 1401.2(s).

The specifications for Employee’s adverse action, as set forth in his Notice of Termination letter, dated, July 26, 2013 (Agency Exhibit 1), provide that:

On January 24, 2013, after a game between the girls’ basketball teams at Woodson High School and Ballou High School, you were involved in a physical altercation outside of Ballou that involved DCPS students, parents, and faculty. At the time, you were the coach of the Woodson girls’ basketball team. According to witnesses, during the altercation, you were seen hitting and kicking a parent of a DCPS student and had to be pulled off of him.

The undersigned was able to examine both the testimonial and documentary evidence presented by the parties throughout the evidentiary hearing and the documents of record. There is no dispute that a brawl involving numerous individuals broke out after the girls’ basketball game on January 24, 2013, outside of Ballou High School. The setting was dark and chaotic by all accounts.

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<sup>23</sup> Tr. vol. 2 at 214.

Masimini and Branch were the only eyewitnesses who testified on behalf of Agency. Although Branch was unable to identify the adults who were fighting, Masimini identified Employee as one of the individuals fighting at the car behind the team bus. Masimini first encountered and met Employee when the H.D. Woodson girls' basketball team arrived at Ballou High School and he escorted them to a classroom which was used as a locker room. At the conclusion of the game, Masimini testified that he was standing in the doorway attempting to get people to exit the building when "some kind of ruckus" happened between the H.D. Woodson's team bus and a vehicle parked behind the bus.<sup>24</sup> Masimini stated that he and a few security guards ran down the walkway toward the fight where they observed the commotion. When Masimini reached the area of the initial fight between the team bus and the vehicle parked behind it, the fight had spilled into the middle of 4<sup>th</sup> Street. Masimini observed several people rushing toward the car behind the bus and identified the individuals as several members of the H.D. Woodson girls' basketball by their championship jackets and their pink Nike sneakers.

During the commotion, Masimini heard a scream and immediately afterwards heard someone yell, "he just stole [R]," which he understood to mean that someone had just hit "R." Subsequently, the group began to dissipate and Masimini saw an older gentleman, who by several accounts was the stepfather of student O.B., in the middle of 4<sup>th</sup> Street being chased by a group of people. As this was happening, Masimini stated that he was attending to O.B. When Masimini looked back, the stepfather was against the gate in between the bus and the truck parked directly behind it. Masimini went over and began to move people away and the stepfather ran to his car. Members of the H.D. Woodson basketball team began to kick the headlights, grill, and side mirrors of the stepfather's car. At this point, Masimini heard another scream from the middle of the street and then went to the other side of the vehicle and there was more commotion surrounding O.B. Masimini testified that he saw the passenger side door of the vehicle open and a man in a gray hooded jacket throw two or three punches and pull the father out of the vehicle. Masimini stated that he was five to six feet away when he saw the man in a grey hooded jacket throw punches at O.B.'s stepfather. Masimini approached the car door and pulled off the gentleman who was fighting with O.B.'s stepfather and the gentleman's hood came off. Masimini recognized him to be the head coach of the H.D. Woodson girls' basketball team, Employee. Masimini based this on his observance of the clothing articles he saw Employee wearing (grey jacket) when he first entered the school building. Masimini looked at him and stated, "what the fuck are you doing?" Despite Masimini's assertion that he observed Employee fighting with O.B.'s stepfather, no other eyewitness testified that they observed Employee punch the stepfather. While Masimini's testimony did not pose any credibility issues, I do not find that his testimony outweighed the testimony of any other eyewitness who testified at the evidentiary hearing.

Barnes, a Special Police Officer with Agency at the time of the incident, was assigned to Ballou High School on January 24, 2013. Barnes escorted the H.D. Woodson girls' basketball team out to the team bus. As the team approached the bus, Barnes heard noise coming from the other side of the bus and observed a fight happening across the street. Barnes attempted to break up the fight on 4<sup>th</sup> Street and further recalled that Employee was a couple yards away from her

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<sup>24</sup> See Employee's Exhibit 1.

toward the median of the street telling the girls on his team to go back across the street back toward the bus.

Barnes recalled that an SUV-style vehicle was a few yards behind the team bus and recalled a fight involving four or five people taking place by the vehicle. Barnes observed an H.D. Woodson female student on the ground being stomped by the vehicle. After the fight, the gentleman driving the vehicle jumped in and sped off. Barnes testified that she never saw Employee interact with the gentleman, identified as the stepfather.

Interestingly, although Barnes was an eyewitness to the incident, Agency never sought a written statement from her to be included in the Investigative Report. Pitts recalled speaking with Barnes about the incident and Barnes stated that she did not see Employee hit the stepfather. Barnes also told Pitts that the scene was dark and chaotic. Pitts felt that Barnes' statement "was not helpful" to Agency's position.<sup>25</sup> Agency's contention that Barnes' statement was not beneficial detracts from the overall Investigative Report. The internal investigation and the Investigative Report, was seemingly conducted to determine whether Employee's actions rose to the level of misconduct. Agency's decision not to include a written statement from an eyewitness because it did not help its case creates the appearance that the Investigative Report was carried out in a subjective fashion to bolster its case against Employee; rather than in an objective fashion to determine the factual disputes.

It is undisputed that Barnes knew Employee prior to this incident because of her prior dealings with him when she worked as a guard at other Agency functions. However, these prior dealings should not have absolved Agency from including Barnes' version of events in the Investigative Report, especially since she was an eyewitness. Furthermore, I find that Barnes' familiarity with Employee from previous dealings did not diminish her credibility.

By all accounts, Cockrell's daughter, a player on Employee's team, was struck and suffered a serious injury during the brawl. While many witnesses stated that Cockrell's daughter, "R", was struck by O.B.'s stepfather, determining who actually struck R.R. is not an issue for the undersigned to determine. Rather, it is Employee's conduct that is the central issue before this tribunal.

Cockrell testified regarding the location of Agency's only eyewitness who testified, Masimini, during the course of the brawl. Cockrell remembered seeing Masimini inside of the building during the basketball game, but did not recall seeing him outside after the game until the fights were over and things had calm down. Cockrell also testified that she did not see Employee interact with the gentleman identified as the stepfather. Cockrell worked at Ballou High School under Masimini until she was subject to a RIF in 2012. Despite being terminated, Cockrell described her relationship with Masimini as a "working relationship."<sup>26</sup> Masimini testified that once Cockrell became aware of the RIF, that their relationship during the last six (6) weeks of Cockrell's tenure at Ballou became strained. Notwithstanding the different portrayals of

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<sup>25</sup> Tr. vol. 2 at 166-167.

<sup>26</sup> Tr. vol. 2 at 235.

Cockrell and Masimini' relationship, Masimini provided Cockrell a letter of recommendation, which Masimini described as "vanilla."<sup>27</sup>

It is undisputed that during the brawl, Cockrell was visibly upset and concerned about her daughter's well-being. Cockrell stated that when she noticed Masimini outside of the building after the basketball game, he was on the sidewalk against the fence, which is labeled "gate" on Employee's Exhibit 1, along with Principal Branch. Cockrell recalled that Masimini approached her when he realized her daughter was injured and asked her how she wanted to proceed. I did not find any credibility issues with Cockrell's testimony. Undoubtedly, her focus was on the well-being of her child, and not the whereabouts of Employee or Masimini.

Huey, whose daughter currently plays basketball for Employee at his new school, also played for Employee when he coached at H.D. Woodson in January of 2013. Huey was at the basketball game on January 24, 2013, at Ballou High School. Huey described the scene as several kids fighting and arguing. Because it was very dark, Huey could not identify any of the children who were fighting. At no time did Huey see Masimini interact with Employee during the events outside of Ballou High School.

Hall, a former Ballou student, testified about what initiated the brawl and what she observed. I found Hall's testimony to be very forthright and it provided great insight into the crux of the brawl. Although Hall's testimony was detailed, she provided little testimony regarding Employee's actions, other than she saw him during the fight and observed him trying to get people to leave the scene.

Gilbeaux also testified regarding what he observed during the brawl. Gilbeaux recalled that Employee was behind him talking with some parents and that when the fight broke out Employee ran over to him to ask what was going on. Gilbeaux did not recall seeing Masimini or anyone in authority outside of Ballou except for a female security officer. Gilbeaux did not see Employee interact with the older gentleman, who was identified as the stepfather. I did not find any credibility issues with Gilbeaux's testimony.

Grey, one of Employee's assistant basketball coaches at the time, testified that he, Gilbeaux, and Employee all went to try and break up the fight and make sure none of their players were involved. He further described the scene of the fight and only recalled seeing one security officer, who was in uniform, outside as the fight was occurring and did not recall seeing anyone from Ballou's staff outside assisting in breaking up the fight. Grey testified that during the brawl, he, Gilbeaux, and Employee were all in close proximity where they could see each other. I did not find any credibility issues with Grey's testimony.

Employee testified on his own behalf regarding the fight that broke out after the girls' basketball game. As the team was leaving the building, Employee was dealing with a situation regarding one of his players and speaking with that player and her mother by the front door of the building (labeled "D" on Employee's Exhibit 1). Once Employee observed the commotion he went toward the action to see what was going on. Employee recalled passing Grey and

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<sup>27</sup> Tr. vol. 1 at 80.

Gilbeaux en route toward the commotion and asking them what was going on. Consistent with all other accounts, Employee stated that “fights were all throughout the [] street.”<sup>28</sup>

Employee contends that he did not interact with the stepfather, who is said to have struck one of his players. Employee stated that he was about fifteen (15) feet away from the stepfather when witnesses first pointed him out. Employee maintains that although he saw the stepfather participating in the brawl, he (Employee) was not fighting with him. After the brawl had calmed down, Employee stayed at the scene and spoke with the police. Employee recalled seeing Masimini before the game and in the building as the team was leaving, but did not see him outside while the fights were occurring. I did not find any credibility issues with Employee’s testimony.

While on the bus headed back to H.D. Woodson, Employee called Ms. Stephanie Evans, who is in charge of athletics for Agency, to inform her of what happened. Employee also called Lucretia Gray, the Athletic Director for H.D. Woodson while on the bus. Shortly afterwards, Stephanie Evans called Employee back and stated that Masimini had told her a different version from what he stated. Ms. Evans told Employee that she was informed that the H.D. Woodson girls were the ones fighting and causing the chaos and that he (Employee) was involved in the fight. Based on the documents of record and the evidentiary hearing, it is apparent that Agency gave Masimini’s version of events more weight than Employee’s rendition. To support its position, Agency called Masimini to testify, however, did not call Security Officer Redman to testify and support her statement that she observed Employee strike the stepfather. Without Redman’s testimony, the undersigned was unable to make any credibility determinations about what is claimed in her written statement.

Couser, who conducted Agency’s internal investigation of the allegations against Employee, testified regarding her Investigative Report. This report, introduced as Agency’s Exhibit 2, provides statements by Masimini and Security Officer Ebony Redman, indicating that they witnessed Employee strike the stepfather of a student. Notably, Security Officer Redman was not called to testify. The parent of the student who was ostensibly assaulted, Mr. McDonald, also provided a statement to Couser.<sup>29</sup> Mr. McDonald’s statement describes the scene but does not identify who struck him, much less Employee. Mr. McDonald was also not called as a witness. Agency missed the opportunity to call two crucial eyewitnesses to support its position that Employee engaged in misconduct. Based on the preponderance of the evidence standard, I find that the evidence presented by Agency did not outweigh the evidence presented by Employee.

Based on the aforementioned, I find that Agency has not met its burden of proof that Employee engaged in misconduct or any other failure of good behavior which is of such nature that it causes discredit to Agency.

Because it has been determined that Agency did not have cause to terminate Employee for “misconduct in office and other failure of good behavior during duty hours which is of such a

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<sup>28</sup> Tr. vol. 2 at 173.

<sup>29</sup> See Agency’s Exhibit 7.

nature that is causes discredit to the employee's agency or employment," pursuant to DCMR §§ 1401.2(b) and 1401.2(s), the appropriateness of the penalty will not be addressed.

**ORDER**

Accordingly, it is hereby **ORDERED** that:

1. Agency's termination of Employee is **REVERSED**; and
2. Agency shall reinstate Employee to the same or comparable position prior to his termination;
3. Agency shall immediately reimburse Employee all back-pay and benefits lost as a result of his removal; and
4. Agency shall file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge