

IN THE MATTER OF

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BEFORE THE BOARD  
OF EDUCATION OF  
CARROLL COUNTY

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**DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY**

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article to the Annotated Code of Maryland brought by \_\_\_\_\_ a former hourly who was terminated for not providing notice of a then pending criminal charge.

\_\_\_\_\_ contends that she was not given any formal notice or indication of the grounds for her termination, and she is appealing from the decision of the Human Resources Generalist, Julie Nguyen, to terminate her from her position. According to \_\_\_\_\_, she is owed a reason or justification for the termination of her employment.

\_\_\_\_\_ initially appealed Ms. Nguyen's decision to Dr. Steven Lockard, Superintendent of Carroll County Public Schools, who referred the appeal to Assistant Superintendent of Administration Jonathan D. O'Neal, who served as the Superintendent's Designee. Having thoroughly reviewed and considered the matter, Mr. O'Neal rendered a decision dated October 12, 2018 in which he found that Ms. Nguyen's decision was not arbitrary, unreasonable, or illegal. Accordingly, Ms. Nguyen's decision to terminate \_\_\_\_\_

\_\_\_\_\_ employment was upheld.

Subsequently, \_\_\_\_\_ filed a timely appeal to this Board. For the reasons set forth more fully below, we shall affirm.<sup>1</sup>

<sup>1</sup> The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

worked as an hourly assistant at from January 24, 2017 until her employment was terminated on August 17, 2018. At the time of her hire, was fingerprinted as a part of the criminal background pre-employment process required of all employees. In March 2018, was arrested and charged with driving under the influence of alcohol. did not notify her supervisors or the Department of Human Resources of the pending criminal charge. However, as a result of , fingerprint being on file, the Department of Human Resources eventually received notification of her arrest via the Criminal Justice Information System. Upon receiving notice of arrest, Ms. Nguyen immediately contacted the Principal at . affirmed to Ms. Nguyen that had failed to report her arrest.

The Carroll County Public Schools Employee Handbook states in relevant part: “Any employee who is charged with and/or arrested for violating a criminal law MUST notify their immediate supervisor in writing within three (3) business days of the charge/arrest. The Supervisor shall notify the Department of Human Resources immediately.” In addition to the reporting requirement, the handbook also outlines consequences for failing to comply with the reporting procedure, “Any employee who fails to report charges and/or an arrest may incur disciplinary action including suspension without pay or termination.”

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protections of the Fourteenth Amendment Due Process Clause. *See Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982); *Anderson and Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415, 417 (1989). For this reason, and because we do not believe that a hearing would aid us in the decision-making process, we decline to conduct an evidentiary hearing or oral argument on this appeal but shall render a decision based upon the written record presented to us.

Board employees receive annual, required training on the aforementioned procedure so that employees are fully aware that a failure to report an arrest is grounds for discipline, up to and including termination. [redacted] completed the Human Resources Policies and Procedures Training for both the 2017-2018 and the 2018-2019 school years. Ms. Nguyen verified that [redacted] had participated in the training and that she had signed off on the annual training acknowledgement where the standards would have been clearly communicated to her. Although employees are not necessarily disciplined for pending charges, it is essential for supervisors and the Department of Human Resources to be made aware of the charges so that decisions can be made regarding what, if any, impact the charges may have with respect to the employee's assignment in the schools. It is the *failure to report* the pending charge, not the charge itself that gives rise to disciplinary action. It is consistent practice that all hourly or contingent employees are terminated for failure to report an arrest.

When a Board employee is subject to possible discipline, the employee is entitled to basic pre-disciplinary due process in accordance with the Supreme Court's decision in *Cleveland Board of Education v. Loudermill*, 430 U.S. 532 (1985). Under *Loudermill*, basic due process is met when an employee is given notice of the charge and an opportunity to respond. Ms. Nguyen provided due process under *Loudermill* when she contacted

[redacted] telephone and advised of her of the notice of the charges received from the Criminal Justice Information System and then gave [redacted] an opportunity to respond. [redacted] admitted that she had been charged and that she had not reported

the charge to her supervisor. As a result of this response, Ms. Nguyen then explained that [redacted] employment would be terminated for failure to report. The termination letter was sent following that conversation.

In this case, Ms. Nguyen was not tenured or covered by any collective bargaining condition that ensured her any measure of due process beyond the basic due process accorded under *Loudermill* and which was provided by Ms. Nguyen. In both the appeal letter and her Appeal Information Form, \_\_\_\_\_ fails to mention her failure to report her arrest or her telephone conversation with Ms. Nguyen. Under the facts of this case, it is clear that \_\_\_\_\_ was given due process under *Loudermill* – i.e., notice of the offense and an opportunity to respond – and that based upon the clear information received from the Criminal Justice Information System and \_\_\_\_\_ response, the termination was appropriate.

It is undisputed that the school system has a consistent policy and practice of requiring employees to report any pending criminal charge within three (3) days and that \_\_\_\_\_ failed to do so. \_\_\_\_\_ violated a condition of her employment by not reporting the pending charge, and her termination was consistent with school system practice. The termination decision was not arbitrary, unreasonable, or illegal but was, rather, a considered decision after a thorough and thoughtful investigation which afforded \_\_\_\_\_ her due process rights under *Loudermill*. Accordingly, this Board shall affirm.

### **DECISION**

For the reasons discussed above, this Board affirms the decision of Jonathan D. O'Neal, Assistant Superintendent of Administration and the Superintendent's Designee in this matter, upholding Human Resource Generalist Julie Nguyen's decision to terminate \_\_\_\_\_ employment. Should she choose to do so, \_\_\_\_\_ may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty days of the date of this decision.

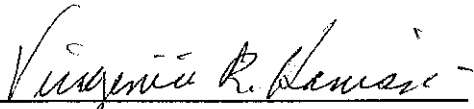


Robert E. Lord, President  
Board of Education of Carroll County

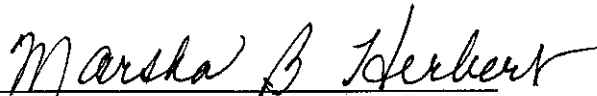
December 12, 2018  
Date



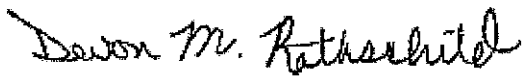
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