**OCB AWARD NUMBER: 2121**

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| **SUBJECT:** | **ARB SUMMARY # 2121** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-30-20091218-0187-06-10** |
| **DEPARTMENT:** | Department of Rehabilitation & Correction |
| **UNION:** | OEA |
| **ARBITRATOR:** | Dwight A. Washington |
| **GRIEVANT NAME:** | Kristin Guthrie |
| **MANAGEMENT ADVOCATE:** | Buffy Andrews |
| **2ND CHAIR:** | Jackie Milsom |
| **UNION ADVOCATE:** | Mark E. Linder |
| **ARBITRATION DATE:** | February 24, 2011 |
| **DECISION DATE:** | May 6, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 13 |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.6481—Dishonesty-In General; 118.301—Progressive Discipline |
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**HOLDING: Grievance DENIED. The Arbitrator found that the Employer had just cause to remove the Grievant for failing to immediately report her arrest pursuant to agency work rules.**

The Grievant was employed as a Teacher within the Department of Rehabilitation and Correction at the time of her removal. The Grievant was removed on December 16, 2009, primarily because she failed to timely notify the Employer of her arrest for shoplifting on November 8, 2009, in violation of Rule 26. The Grievant informed the Employer on November 12, 2009, that she was “picked up” but failed to provide any specifics regarding the November 8th incident. During the Employer’s investigation, it was discovered that in July 2007 and July 2009, the Grievant had two other criminal charges on her record. Neither of these arrests were reported to the Employer by the Grievant. The Grievant was charged with a violation of Rule 26, failure to immediately report a criminal arrest; Rule 7, failure to follow post orders; and Rule 39, any act that would bring discredit to the Employer. At the time of the Grievant’s removal her disciplinary record included: a written warning, a two-day suspension (later reduced to a written warning), and a two-day suspension.

The Employer arguedthat the Grievant failed to immediately report the July 2007 and July 2009 incidents in violation of Rule 26. The Employer argued that if the November 8th incident did not occur, the Grievant would not have reported the two July incidents. The Employer argued that had the Grievant’s name not appeared in a local newspaper, she may never have reported the November incident. The Grievant’s failure to immediately report the arrest on November 8, 2009 was a violation of the Employer’s work rules. The publication of the Grievant’s name and criminal offense in the local newspaper brought discredit to the Employer. The Employer opined that the Union’s mitigation arguments did not override the conclusive evidence that the Grievant violated work rules. The Union did not present any medical evidence to show that the Grievant was not capable of complying with the Employer’s work rules. Based on the Grievant’s prior disciplinary record and the current offense, the Employer argued that removal was justified.

The Union arguedthat the Grievant had ten years of teaching experience with the Employer, and was well regarded by her peers and the community. The Union claimed that the Employer failed to conduct a proper investigation and stacked the charges against the Grievant. Although the Union recognized that the Grievant did not properly notify the Employer of the three incidents, there were mitigating circumstances that should be considered. The Union first argued that the Grievant’s length of service should be considered as a mitigating factor. In addition, the Union argued the a medical condition affected the Grievant’s actions. The Union sought another opportunity for the Grievant via a last chance agreement or a determination that just cause did not exist to justify the Grievant’s removal.

The Arbitrator foundthe Grievant was cognizant of all the events preceding her removal and was actively engaged throughout the proceeding. The Grievant acknowledged she received the rules that governed her employment. The Grievant’s failure to immediately contact the institution on November 8th provided the basis for a violation of both Rules 7 and 26. The Arbitrator found that the Grievant’s off duty arrest in November also brought discredit to the Employer when the local newspaper printed her name and her criminal arrest. The Arbitrator opined that the amount of people that might have seen the newspaper with the Grievant’s name was immaterial. Certain off-duty conduct is extremely important because of the Employer’s need for trust and public confidence. The Arbitrator determined that the Union’s offering of mitigating factors such as the Grievant’s length of service and job recognitions were not enough to modify a just cause finding. Further, there was no medical support presented in the record to establish the Union’s claim that the Grievant’s condition had any effect on her actions. Therefore, the Arbitrator determined there was just cause to remove the Grievant.