

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Cara Hendrix,

*Appellant,*

v.

Case No. 09-SUS-05-0277

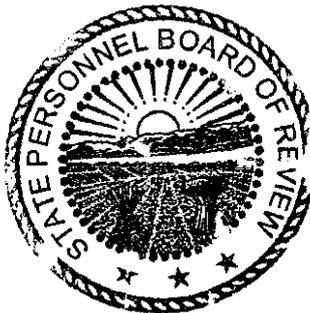
Central State University,

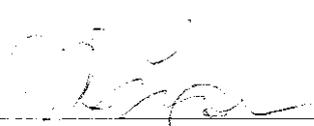
*Appellee.*

**ORDER**

This matter came on for consideration on the motion of Appellee that the Rescission attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached rescission, incorporated herein by reference and made a part of the case file in this appeal, be **ADOPTED**, and that Appellant's appeal be **DISMISSED**.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

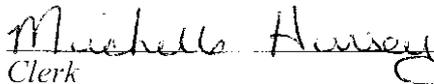


  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 9, 2009.

  
\_\_\_\_\_  
Michelle Hursey  
*Clerk*

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

11-9-09

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

CARA HENDRIX, : 2009 007 -9 PM 2:44  
Appellant, : CASE NO. 09-SUS-05-0277  
v. : JAMES R. SPRAGUE  
CENTRAL STATE UNIVERSITY, : Administrative Law Judge  
Appellee. :

**APPELLEE'S MOTION TO DISMISS**

Appellee, Central State University, hereby moves to dismiss the within appeal because the R.C. § 124.34 Order that gave rise to the appeal has been rescinded. A memorandum in support is attached.

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General



REID T. CARYER (0079825)  
Assistant Attorney General  
Employment Law Section  
30 East Broad Street, 23<sup>rd</sup> Floor  
Columbus, Ohio 43215  
(614) 644-7257 Telephone  
(614) 752-4677 Fax

## MEMORANDUM IN SUPPORT

Appellee, Central State University ("CSU"), hereby notifies the Board that pursuant to O.A.C. § 124-3-03 it has rescinded the "Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation" (hereinafter "124.34 Order") that gave rise to the present appeal. CSU effected the rescission by way of a written notice served upon the Appellant, Cara Hendrix, on October 1, 2009.<sup>1</sup> (See Exhibit D, attached). As the written notice indicates, CSU rescinded the five day suspension originally imposed and shortened the period of suspension to three days. *Id.* As a result of the rescission of the 124.34 Order and subsequent issuance of a three day suspension, CSU has compensated Ms. Hendrix for back pay for two days, that is, sixteen (16) hours or the back-pay differential between the five day and the three-day suspensions. Attached as Exhibit E is a copy of the PHICHEK 7.2 screen showing CSU's payment of three hundred three dollars and forty seven cents (\$303.47) to Ms. Hendrix on October 1, 2009. To the extent that Hendrix's discipline was reduced to a three day suspension and she has been issued her back-pay, Ms. Hendrix's appeal has been rendered moot because classified, overtime eligible employees may only appeal suspensions or fines of more than 24 hours. R.C. § 124.34(B).

Because the 124.34 Order that gave rise to the present appeal has been rescinded, CSU respectfully requests that the Board dismiss this appeal.

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<sup>1</sup> On October 6, 2009, Appellant, Cara Hendrix, filed a response to Kimberly Manigault's letter where she alleges, among other things, that Ms. Manigault has violated her due process rights. Under R.C. § 124.34(B), Ohio recognizes that fines or suspensions of 24 hours or less for overtime eligible employees are *de minimis* and therefore prohibits an appeal to SPBR for imposition of those levels of fines and suspensions. In addition, the U.S. 6<sup>th</sup> Circuit Court of Appeals and Ohio's 10<sup>th</sup> District Court of Appeals recognize that routine disciplinary suspensions without pay of two or three days constitute a deprivation of property in theory, but suspensions of that length are *de minimis* and not deserving of due process consideration, e.g. notice and a hearing. See *Carter v. Western Reserve Psychiatric Rehabilitation*, 767 F.2d 270, 272 n.1 (6th Cir. 1985); *Boals v. Gray*, 775 F.2d 686, 697 (6th Cir. 1985); *Gillard v. Norris*, 857 F.2d 1095, 1098 (6th Cir. 1988); also, *Leisenheimer v. Department of Mental Retardation & Developmental Disabilities*, 1998 Ohio App. LEXIS 4765 (10<sup>th</sup> Dist. 1998).

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General



REID T. CARYER (0079825)  
Assistant Attorney General  
Employment Law Section  
30 East Broad Street, 23<sup>rd</sup> Floor  
Columbus, Ohio 43215  
(614) 644-7257 Telephone  
(614) 752-4677 Fax

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *Appellee's Motion to Dismiss* was served upon Cara Hendrix, 1340 Hemmingway Drive, Apt. F, Fairborn, Ohio 45324 by ordinary U.S. Mail, postage prepaid, this 9<sup>th</sup> day of October, 2009.



REID T. CARYER (0079825)  
Assistant Attorney General

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

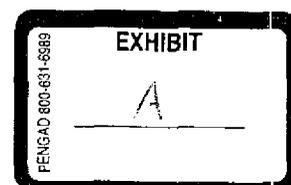
CARA HENDRIX, :  
Appellant, : CASE NO. 09-SUS-05-0277  
v. : JAMES R. SPRAGUE  
CENTRAL STATE UNIVERSITY, : Administrative Law Judge  
Appellee. :

AFFIDAVIT OF KIMBERLY MANIGAULT

STATE OF OHIO )  
 ) ss:  
COUNTY OF GREENE )

Kimberly Manigault, being first duly cautioned and sworn, deposes and states as follows:

1. I am employed by Central State University as the Director of Human Resources.
2. In that capacity, among other things, I am involved in all aspects of the disciplinary process for the University's classified employees. Pursuant to University Policy No. 609, for purposes of R.C. Chapter 124 I serve as the appointing authority for the classified civil servants at the University. See Exhibit B attached.
3. On May 20, 2009, I issued a R.C. § 124.34 Order imposing a five day suspension on Cara Hendrix. See Exhibit C attached.
4. On October 1, 2009 I mailed a letter to Cara Hendrix notifying her that the University rescinded her five day suspension and instead imposed a three day suspension. See Exhibit D attached.
5. As a result of rescinding the five day suspension, the University issued a check to Cara Hendrix in the amount of three hundred three dollars and forty seven cents (\$303.47). That check compensated Ms. Hendrix for back pay for two days, that is, sixteen (16) hours or the back-pay differential between the five-day and the three-day suspensions. Attached as Exhibit E is a copy of



the PHICHEK 7.2 screen showing the University's payment of three hundred three dollars and forty seven cents (\$303.47) to Ms. Hendrix. The check was mailed on October 7, 2009.

6. Attached to this affidavit are true and accurate copies of documents referred to in the above paragraphs. Those documents are maintained in the usual course of business of Central State University.

Further Affiant sayeth naught.



KIMBERLY MANIGAULT  
Director of Human Resources  
Central State University

Sworn to before me and signed in my presence this 9th day of October, 2009.

  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires on 11/28/2009.



ELIZABETH NASH, Notary Public  
In and for the State of Ohio  
My Comm. Expires: 11/28/2009

# Order of Removal, Reduction, Suspension, Fine, Involuntary Disability Separation

M.S. Cara Hendrix

This will notify you that you are:  removed;  suspended;  suspended (working);  fined;  
 involuntary disability separated;  reduced in pay, from your position of

Administrative Assistant and/or reduced to new position of \_\_\_\_\_ (if applicable)

effective Suspension without pay: May 21, 22, 26, 27, 28, 2009.  
(date)

The reason for this action is that you have been guilty of (List relevant R.C. 124.34 disciplinary offense(s)).  
(Section not applicable for involuntary disability separation.)

**Specifically:**

On April 28, 2009, refusal to assist your Supervisor with an assign-  
ment as instructed and refusal to communicate with your Supervisor as  
instructed. On May 6, 2009, refused to communicate with your Supervisor as  
instructed, refusal to open the office door as instructed, refusal to  
complete an activity log as instructed and refusal to relocate files as  
instructed on May 1, 2009. See suspension letter dated 5/20/09.

Notice of pre-disciplinary/separation hearing given to employee: May 8, 2009  
(date)

Pre-disciplinary/separation hearing held or waived: Held: May 13, 2009  
(date)

Employee allowed to meet with employer:  Yes  No

Order hand-delivered to employee: May 20, 2009  
(date, if hand-delivered)

If employee is suspended, list dates of suspension: May 21, 22, 26, 27, 28, 2009

Signed at Wilberforce Ohio, May 20, 2009  
(city) (date)

Counter signature, if applicable

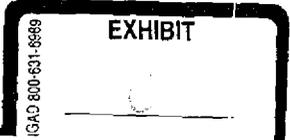
Signature of Appointing Authority  
Kimberly A. Manigault

Counter signature, if applicable

Type Name and Title of Appointing Authority  
Kimberly A. Manigault  
Human Resources Director

Counter signature, if applicable

Type Department, Agency, or Institution  
Central State University



## **IMPORTANT INSTRUCTIONS TO THE EMPLOYEE**

If you wish to appeal this action, then you must file your written appeal with the State Personnel Board of Review (SPBR) at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215-4213. **Your appeal must actually be received and time-stamped by SPBR by the tenth calendar day from the date this Order was served.** For the purposes of your appeal, the date on which this Order is served is the date the Order is delivered to you by hand or to your last known mailing address, as maintained by your Appointing Authority, by certified United States mail, whichever occurs first. You may obtain SPBR's Administrative Rules by writing the above office or by telephoning SPBR at (614) 466-7046. You may also obtain the rules at SPBR's website at <http://pbr.ohio.gov>.

### ***Example of deadline to file appeal:***

An employee is given a 40-hour suspension. The suspension is to begin on October 11 and run five working days through October 15. The employee is served with the forthcoming suspension Order on October 8. The employee has until October 18 to file a written appeal (ten days from the date the employee was served with the Order).

**Reminder:** If you are employed by a municipality or township that has a civil service commission, your appeal lies with that commission and not SPBR.

You may contact SPBR at (614) 466-7046 regarding the above information or regarding SPBR's jurisdiction or you may visit our website at <http://pbr.ohio.gov>.

**POLICY No. 609**

**Area: Human Resources**

Date Adopted: November 4, 1999

Certified by \_\_\_\_\_

Dr. Adolphus Andrews  
Vice President  
Administration and Finance

Revisions Approved:

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**SUBJECT: CORRECTIVE ACTION**  
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The University staff may be reprimanded, demoted, suspended or terminated for violation of University rules, policies, and for such offenses as incompetence, inefficiency, excessive or unacceptable absence from work, dishonesty, drunkenness, immoral conduct, insubordination, falsification of employment application, neglect of duty, job abandonment, and/or failure to maintain good behavior. Supervisors are expected to manage performance and to take corrective steps when appropriate.

Corrective action for those employees represented by bargaining units must be implemented in accordance with the terms of the applicable collective bargaining agreements.

**Guidelines**

- I. Administrative and Unclassified Professional Staff
  - A. All administrative officers and unclassified professional staff serve at the discretion of the appointing authority, and shall be employed by the University upon the positive recommendation of the President and the approval of the Board of Trustees. Administrative officers and unclassified staff may be terminated for just cause and/or financial exigency, without notice, or they may be terminated without cause subject to any contractual notice provisions.
  - B. All requests for involuntary termination should be reviewed by Human Resources prior to any action being taken.
- II. Classified Civil Service Staff
  - A. The University subscribes to the principle of corrective action and follows a policy of progressive steps for minor infractions, as determined by the University. Corrective action for minor infractions usually involves

