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## COMPLIANCE RULING

In the matter of the Virginia Community College System  
Ruling Number 2024-5586  
July 13, 2023

The Virginia Community College System (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) in relation to the grievant’s dismissal grievance. For the reasons set forth below, EDR finds that the grievance was not timely initiated and may not proceed.

### FACTS

On June 30, 2022, the agency issued to the grievant a Group III Written Notice with termination of employment effective on the same date. According to the agency, disciplinary documentation related to dismissal was provided to the grievant by email on that date and also discussed via contemporaneous remote video conference. The agency’s accompanying termination letter included instructions that the grievant could appeal the disciplinary action by filing a state employee grievance within 30 calendar days of his receipt of the disciplinary documents.

The grievant submitted a dismissal grievance to EDR on July 4, 2023. His submissions included allegations that the agency failed to follow DHRM Policy 1.60, *Standards of Conduct*, in terminating his employment. In response to EDR’s notification of receipt of the grievance, the agency asserts that the grievance was initiated in an untimely manner and therefore should not proceed to a grievance hearing pursuant to the grievance procedure.

### DISCUSSION

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.<sup>1</sup> Because dismissal grievances are initiated directly with EDR,<sup>2</sup> an agency is essentially unable to follow this process as outlined. Accordingly, the agency in this case has requested a ruling from this Office regarding the issue of alleged noncompliance.

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

<sup>2</sup> *Id.* § 2.5.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date they knew or should have known of the event or action that is the basis of the grievance.<sup>3</sup> When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>4</sup> Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.”<sup>5</sup>

Here, the evidence presented to EDR indicates that the grievant received a Group III Written Notice indicating termination of his employment with the agency on June 30, 2022. Thus, a timely grievance should have been submitted by midnight on August 1, 2022.<sup>6</sup> The grievant did not submit his dismissal grievance until July 4, 2023 – more than one year after receiving notice of his dismissal from employment. Thus, it is untimely and may not proceed absent just cause.<sup>7</sup>

In his submissions, the grievant claims that the agency failed to follow DHRM policy by not employing progressive discipline to address his conduct, by not giving him an opportunity to respond to the charges against him prior to termination, and by proceeding with disciplinary action based on improper motives by management. Even assuming the grievant’s concerns in these respects are legitimate, EDR’s review of the available information does not suggest any just cause that might excuse the grievant’s failure to raise these challenges in a timely-submitted grievance. Accordingly, EDR concludes that the grievant has not demonstrated just cause for the delay in initiating his grievance.

### CONCLUSION

For the reasons set forth above, EDR concludes that the dismissal grievance was not timely initiated and that there was no just cause for delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR’s rulings on matters of compliance are final and nonappealable.<sup>8</sup>

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<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

<sup>4</sup> *E.g.*, EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

<sup>5</sup> *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

<sup>6</sup> Thirty calendar days from June 30, 2022 would have been July 30, 2022 – a Saturday. Where the 30th calendar day falls on a weekend, the grievance may be filed on the next business day on which state offices are open. *Grievance Procedure Manual* § 2.2. In this instance, the next business day would have been Monday, August 1, 2022.

<sup>7</sup> Under the grievance procedure, “just cause” is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

<sup>8</sup> *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).