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ACCESS RULING

In the matter of the Department for the Deaf and Hard of Hearing
Ruling Number 2024-5619
October 13, 2023

On or about September 29, 2023, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form from the grievant. In response, the grievant's former employer, the Department for the Deaf and Hard of Hearing (the "agency"), has asserted that the grievant was a probationary employee and, thus, lacks access to the grievance procedure.

DHRM Policy 1.45, *Probationary Period*, states that employees "who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment."¹ The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³

DHRM Policy 1.45 also provides that "[p]ro probationary periods may be extended for up to 6 additional months for performance reasons. The reasons for the extensions must be documented on a Probationary Progress Review form. . . ." ⁴ Here, it appears that the grievant began her employment with the agency on April 25, 2022. On April 24, 2023, the agency issued her a Probationary Progress Review form indicating a six-month extension of her probationary period, noting multiple performance-based concerns. Consistent with the extension period, the form indicated a new probationary end date of October 25, 2023. As such, the grievant had not completed her probationary period at the time she filed her grievance. Therefore, EDR finds that the grievant does not have access to the grievance procedure. Her dismissal grievance will not proceed to a hearing, and EDR will close its file.⁵

¹ DHRM Policy 1.45, *Probationary Period*, at 1.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ *E.g.*, EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

⁴ DHRM Policy 1.45, *Probationary Period*, at 2.

⁵ This ruling does not address whether any legal or other remedy may be available to the grievant for the issues raised in her grievance. This ruling determines only that she is ineligible to pursue her claims through the state employee grievance procedure.

EDR's access rulings are final and nonappealable.⁶

Christopher M. Grab
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⁶ Va. Code § 2.2-1202.1(5).