

Issues: Access – (access to the grievance procedure), and Qualification – Grievance Procedure (other issue); Ruling Date: April 2, 2018; Ruling No. 2018-4683; Agency: Norfolk State University; Outcome: Access Granted and Qualified in Full.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

ACCESS/QUALIFICATION RULING

In the matter of Norfolk State University
Ruling Number 2018-4683
April 2, 2018

The Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management (DHRM) has received a Grievance Form A challenging the grievant's termination. The agency has indicated that the grievant was separated during her probationary period, and thus, has requested a ruling from EEDR as to whether she has access to the grievance procedure.

FACTS

The grievant began working with Norfolk State University (the University) on July 25, 2016 in a classified position. On May 31, 2017, following an internal investigation into allegedly inappropriate conduct, the University issued a letter to the grievant, advising her that her probationary period was being extended six additional months, to January 25, 2018. Subsequently, the University alleges that the grievant's work performance declined, thus, on or about January 23, 2018, the grievant was issued a termination letter.¹

DISCUSSION

Pursuant to DHRM Policy 1.45, *Probationary Period*, employees serve a 12-month probationary period, which can be extended by the agency for up to six months.² The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.³ Thus, if the grievant was terminated during the probationary period, there is no access to initiate this grievance.

However, the University has provided EEDR with the May 31, 2017 letter notifying the grievant of a six-month extension to her probationary period. DHRM Policy 1.45, *Probationary Period*, provides that "[p]robationary 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 (see Attachment A) or an alternate form designed by the agency."⁴ It is

¹ Despite multiple attempts by EEDR to obtain additional information in this matter, the University has failed to respond. Therefore, EEDR will render its determination based upon the information provided to this Office as of the date of this ruling.

² DHRM Policy 1.45, *Probationary Period*.

³ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

⁴ DHRM Policy 1.45, *Probationary Period*.

unclear whether the grievant was provided a Probationary Progress Review Form, or an acceptable alternative, as referenced in this policy. Nevertheless, after a review of those documents that the University did provide, DHRM has determined that the reasons provided to the grievant in the May 31, 2017 letter constitute “conduct” rather than “performance” issues, and thus, would not serve as an appropriate basis to extend a probationary period. The documentation presented does not support a conclusion that the grievant’s probationary period was properly extended under policy.⁵ Therefore, per policy, the grievant became non-probationary following the expiration of her original twelve-month probationary period in July 2017.⁶

Accordingly, EEDR must conclude that the grievant was not a probationary employee at the time of her dismissal and, as such, the grievant has access to initiate a grievance. Thus, any termination that was not done pursuant to a Written Notice or the provisions of DHRM Policy 1.40, *Performance Planning and Evaluation*, would not be proper. EEDR deems it appropriate to qualify the dismissal grievance for hearing, in its entirety. The University may raise any arguments as to why its termination of the grievant was appropriate at the hearing. EEDR directs that the University submit, within five days of the date of this ruling, a fully completed Form B. A hearing officer will be appointed in a subsequent communication.

EEDR’s access rulings are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁵ See *id.*

⁶ See *id.*

⁷ Va. Code § 2.2-1202.1(5).