

Issue: Access to the Grievance Procedure; Ruling Date: April 9, 2018; Ruling No. 2018-4703; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



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

**ACCESS RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2018-4703  
April 9, 2018

On April 4, 2018, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form A from the grievant. The Department of Behavioral Health and Developmental Services (the “agency”) challenges the grievant’s access to the grievance procedure. For the reasons set forth below, EEDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

In this case, the agency indicates that the grievant began working with the agency in a classified position on October 25, 2017. On March 5, 2018, the grievant was issued a letter terminating her from employment. The grievant subsequently filed a dismissal grievance directly with EEDR to challenge her separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has since informed EEDR that the grievant was terminated prior to the end of her probationary period and, thus, should not have access to file this grievance.

DISCUSSION

DHRM Policy 1.45, *Probationary Period*, provides 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.”<sup>1</sup> The grievant had not completed her twelve-month probationary period when she was terminated on March 5, 2018. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>2</sup> Employees who have not completed their probationary period do not have access to the grievance procedure.<sup>3</sup> Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge her termination. As a result, this dismissal grievance will not proceed to a hearing and EEDR will close its file.

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<sup>1</sup> DHRM Policy 1.45, *Probationary Period*.

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

<sup>3</sup> *E.g.*, EDR Ruling No. 2005-1032.

EEDR's rulings on access are final and nonappealable.<sup>4</sup>



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<sup>4</sup> Va. Code § 2.2-1202.1(5).