



EMILY S. ELLIOTT  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

**ACCESS RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2019-4920  
May 2, 2019

On April 26, 2019, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)<sup>1</sup> received a Dismissal Grievance Form from the grievant. Because the grievant was separated<sup>2</sup> during her probationary period, the Department of Behavioral Health and Developmental Services (the “agency”) challenges whether she has access to the grievance procedure.

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>3</sup> The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>4</sup> The grievant began working in a classified position at one of the agency’s facilities on May 10, 2018, and resigned from employment with the agency on April 17, 2019. As a result, she had not completed her twelve-month probationary period at the time of her separation. Employees who have not completed their probationary period do not have access to the grievance procedure.<sup>5</sup> Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance challenging her separation. As a result, this dismissal grievance will not proceed to a hearing and EDR will close its file.<sup>6</sup>

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> While the agency indicates the grievant voluntarily resigned, the grievant asserts that her resignation was forced. Whether the grievant’s separation is considered a resignation or termination does not affect the analysis of this ruling.


<sup>3</sup> DHRM Policy 1.45, *Probationary Period*.

<sup>4</sup> Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

<sup>5</sup> E.g., EDR Ruling No. 2011-2940.

<sup>6</sup> This ruling does not address whether the grievant may have some other remedy, legal or otherwise, as to this situation. This ruling only determines that she is ineligible to pursue her claims through the state grievance procedure.

EDR's access rulings are final and nonappealable.<sup>7</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>7</sup> Va. Code § 2.2-1202.1(5).