

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: November 20, 2017; Ruling No. 2018-4644; Agency: Virginia Community College System; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of the Virginia Community College System
Ruling Number 2018-4644
November 20, 2017

The Virginia Community College System (the agency) seeks a compliance ruling concerning the grievant's October 30, 2017 grievance.

FACTS

On October 30, 2017, the grievant initiated a grievance directly with the Office of Equal Employment and Dispute Resolution (EEDR), utilizing the Dismissal Grievance Form A to challenge his separation from employment. In its response to EEDR, the agency asserts that the grievant did not request relief that can be granted under the *Grievance Procedure Manual* and accordingly, requests a ruling that the grievance is out of compliance with the grievance procedure.

DISCUSSION

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.¹ Because dismissal grievances are initiated directly with EEDR, an agency is essentially unable to follow this process as outlined. Accordingly, the agency requests a ruling from this Office regarding the issue of alleged noncompliance.

The *Grievance Procedure Manual* indicates that "[a]n employee must initiate a grievance on a fully completed 'Grievance Form A' . . . [which] must state the management action(s) or omission(s) being grieved, the facts in support of the grievance, and the relief requested."² In this instance, the grievant wrote as the relief he requests "I only wish the facts to be known." To this, the agency argues that the agency has effectively granted him this relief by escalating his concerns outside of the grievant's management chain of command. The agency further asserts that the grievant was offered the option to resign in lieu of termination, and points out that he does not state that he wishes to be reinstated or receive backpay.

¹ *Grievance Procedure Manual* §6.2.

² *Id.* § 2.4.

The *Rules for Conducting Grievance Hearings* provide that “the hearing officer is not limited to the specific relief requested by the employee on the Form A”³ For example, the *Rules* list as potential remedies upholding or reversing the disciplinary action, or reinstating the grievant with backpay.⁴ Even if the grievant does not wish to be reinstated, which the grievant has not stated he explicitly does not want, the hearing officer is not precluded from awarding other remedies such as those mentioned above. Awarding appropriate relief to remedy the actions challenged would be squarely within the purview of a hearing officer, regardless of relief requested on the Form A.⁵ Thus, the grievant may choose to exercise his right to challenge the disciplinary action itself via the grievance procedure, as he has clearly done here.

For the reasons discussed above, there is no basis for EEDR to conclude that the grievant has failed to comply with the grievance procedure. Within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer, using the Grievance Form B. EEDR’s rulings on matters of compliance are final and nonappealable.⁶



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Office of Equal Employment and Dispute Resolution

³ *Rules for Conducting Grievance Hearings* § VI(B).

⁴ *See id.*

⁵ EDR Ruling No. 2017-4412 n.1.

⁶ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).