

Issue: Access to the Grievance Procedure; Ruling Date: January 5, 2015; Ruling No. 2015-4076; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



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

**ACCESS RULING**

In the matter of the Department of Behavioral Health & Developmental Services  
Ruling Number 2015-4076  
January 5, 2014

On December 22, 2014, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form A from the grievant. The Department of Behavioral Health & Developmental Services (the agency) challenges the grievant's access to the grievance procedure. For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

The grievant began working with the agency on May 25, 2014 in a classified position. On December 5, 2014, the grievant was issued a termination letter, releasing her from employment. The grievant subsequently filed a dismissal grievance directly with EDR to challenge her separation from employment. While the dismissal grievance initially appeared to be filed appropriately, the agency has since informed EDR 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 December 5, 2014. 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.<sup>4</sup> As a result, this dismissal grievance filed will not proceed to a hearing and EDR 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.

<sup>4</sup> While the grievant does not have access to file a grievance, there may be other options available to her to challenge the agency's allegedly discriminatory practices raised in her grievance. For instance, "[a] probationary employee

EDR's access rulings are final and nonappealable.<sup>5</sup>



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who claims that termination or other disciplinary action was based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, genetics, or disability may file a discrimination complaint with the Office of Equal Employment Services in the Department of Human Resource Management or other agencies as appropriate.” DHRM Policy 1.45, *Probationary Period*. The Office of Equal Employment Services can be contacted by calling 1-800-533-1414 or (804) 225-2136.

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