

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: March 19, 2015; Ruling No. 2015-4118; Agency: Virginia Community College System; Outcome: Grievant in Compliance.



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

**COMPLIANCE RULING**

In the matter of Virginia Community College System  
Ruling Number 2015-4118  
March 19, 2015

The grievant has requested a ruling on whether her March 12, 2015 grievance with a Community College of the Virginia Community College System (the “agency”) is in compliance with the grievance procedure. The agency asserts that the grievant did not initiate the grievance timely and that the grievance lacks adequate specificity regarding the management action being grieved. For the reasons set forth below, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management determines that the grievance shall be permitted to proceed.

FACTS

In the grievant’s March 12, 2015 grievance, she appears to challenge conduct by her supervisor, including, in part, “[s]houting at and demoralizing employee[s],” “playing favorites,” threatening the grievant’s employment, failing to communicate regarding the grievant’s duties, transferring or failing to assign duties, and failing to timely review the employee. The grievant states that this conduct has been occurring since 2002 and indicates that it has continued to the present. On March 13, 2015, the agency administratively closed the grievance on the grounds that the date provided on the Grievance Form A, “Has been occurring since 2002,” is not sufficiently specific to indicate that the grievance is timely, and that the grievant failed to identify a specific “management action or omission being grieved.” The grievant now appeals that determination.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.<sup>1</sup> When an employee initiates a grievance beyond the 30 calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

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<sup>1</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

The agency asserts that the grievant failed to initiate the grievance timely because the grievant listed “Has been occurring since 2002” as the date the grievance occurred on her Grievance Form A. A claim of harassment or other workplace conduct that is ongoing, such as that alleged here, is raised in a timely manner if some agency action alleged to be part of the harassing or intimidating conduct occurred within the 30 calendar days preceding the initiation of the grievance.<sup>2</sup> As the grievance indicates that the course of conduct being challenged allegedly has continued from 2002 to the present, the grievant’s allegations are timely.<sup>3</sup>

Further, EDR does not agree that the grievant failed to identify the management action or omission being grieved with sufficient specificity to properly initiate a grievance. While there could be more clarity to the specific issues the grievant has with management, the Grievance Form A clearly challenges ongoing harassing conduct by the grievant’s direct supervisor. Moreover, the grievant supplemented the allegations on her grievance with 84 pages of additional documentation. To the extent the agency believes it needs more information to respond to the grievant’s allegations, the agency may request such information directly from the grievant in conjunction with the management resolution steps.

#### CONCLUSION

For the reasons discussed above, EDR has determined that the grievance initiated on March 12, 2015, is compliant with Sections 2.2 and 2.4 of the *Grievance Procedure Manual* and must be permitted to proceed. The grievance must be returned to the first step-respondent, who must respond to the grievance within five workdays of receipt of this ruling and the grievance paperwork.<sup>4</sup> EDR’s rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>2</sup> See Nat’l R.R. Pass. Corp. v. Morgan, 536 U.S. 101, 115-18 (2002) (holding the same in a Title VII hostile work environment harassment case); see also Graham v. Gonzales, No. 03-1951, 2005 U.S. Dist. LEXIS 36014, at \*23-25 (D.D.C. Sept. 30, 2005) (applying *Morgan* to claim of retaliatory hostile work environment/harassment); Shorter v. Memphis Light, Gas & Water Co., 252 F. Supp. 2d 611, 629 n.4 (W.D. Tenn. 2003).

<sup>3</sup> In the documentation submitted with the grievance, it would also appear that the grievant has specifically identified recent counseling and meeting(s) with supervision that are purportedly challenged as part of this ongoing behavior.

<sup>4</sup> It appears EDR received some original documentation with the grievance packet for purposes of this ruling. EDR will provide the documents received to the agency’s human resources office for routing to the appropriate step-respondent.

<sup>5</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).