

Issue: Access to the Grievance Procedure; Ruling Date: May 23, 2016; Ruling No. 2016-4355; Agency: Virginia Commonwealth University; Outcome: Access Denied.



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

ACCESS RULING

In the matter of Virginia Commonwealth University
Ruling Number 2016-4355
May 23, 2016

On or about May 11, 2016, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a dismissal grievance initiated by the grievant to challenge her separation from employment. The grievant’s former employer, Virginia Commonwealth University (“University”), challenges whether she has access to the grievance procedure to initiate this grievance. For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance procedure.

FACTS

The grievant was employed by the University as a Teaching and Research faculty member until November 13, 2015, when her contract with the University ended. On or about May 11, 2016, the grievant initiated a dismissal grievance with EDR challenging her termination, as well as acts related to her employment that have allegedly occurred prior to and since her termination.¹ The University asserts that as a member of the teaching and research faculty, the grievant lacks access to the state employee grievance process.²

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law. By statute, employees in positions designated as exempt from the Virginia Personnel Act (VPA) do not have access to the grievance procedure.³ Pursuant to Virginia Code § 2.2-2905(8), “teaching and research staffs of

¹ The grievant also appears to argue that the University wrongfully denied her access to an internal grievance procedure, presumably a faculty grievance process at the University. Specifically, the grievant asserts that in September 2015, prior to her termination, she was advised that there was no grievance procedure available to her. The grievant also asserts that prior to her termination, University human resources “denied [her] the opportunity to file a grievance about [her] termination contract three more times.” It is unclear from the information provided to EDR what internal or faculty grievance procedures would have been available to the grievant or the grounds on which the University purportedly refused the grievant’s efforts to pursue such a grievance. Further, EDR has no authority over the University’s faculty grievance procedure.

² Because EDR determines that there is not access to initiate this grievance under the state employee grievance procedure, the issue of whether the grievance was timely filed need not be addressed.

³ Va. Code § 2.2-3002.

state educational institutions” are exempted from the VPA.⁴ Because the grievant was employed as a faculty member with the University, she was exempt from the VPA and therefore does not have access to the state employee grievance procedure.⁵ As such, the dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.

EDR’s access rulings are final and nonappealable.⁶



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⁴ See also Department of Human Resources Management (DHRM) Policy 2.20.

⁵ This ruling only determines that the grievant lacks access to the state employee grievance procedure. To the extent the grievant argues that the University has failed to meet its obligations to address her complaints under other laws or policies, such claims do not fall within EDR’s authority. In addition, this ruling has no bearing on whether the grievant has other legal or equitable remedies available to her in another forum.

⁶ Va. Code § 2.2-1202.1(5).