

Issue: Access to the Grievance Procedure; Ruling Date: January 17, 2019; Ruling No. 2019-4840; Agency: Virginia State University; Outcome: Access Denied.



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

ACCESS RULING

In the matter of Virginia State University
Ruling Number 2019-4840
January 17, 2019

On January 7, 2019, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a dismissal grievance initiated by the grievant to challenge his separation from employment. The grievant’s former employer, Virginia State University (the “University”), challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance. For the reasons set forth below, EEDR concludes that the grievant does not have access to the state employee grievance procedure.

FACTS

The University alleges that, on or about December 6, 2018, the grievant was given notice that his employment contract would be terminated on December 24, 2018, due to unsatisfactory job performance. On January 7, 2019, the grievant initiated a dismissal grievance with EEDR challenging his termination, as well as other acts related to his employment that allegedly occurred prior to his termination. The University asserts that the grievant was employed as a member of its non-teaching faculty and, as a result, does not have access to the state employee grievance procedure.

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.¹ Generally speaking, employees who are in positions designated as exempt from the Virginia Personnel Act (“VPA”) do not have access to the grievance procedure.² When the General Assembly adopted the Restructured Higher Education Financial and Administrative Operations Act in 2005, institutions of higher education, like the University, were given approval to designate “positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field” as administrative and professional faculty, and this provision was included within the VPA.³ Accordingly, EEDR has previously held that

¹ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

² Va. Code §§ 2.2-2905, 2.2-3002.

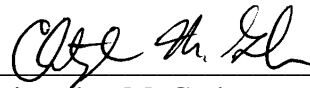
³ *Id.* § 2.2-2901(E).

“Administrative/Professional Faculty” at institutions of higher education are exempt from the VPA and do not have access to the state employee grievance procedure.⁴

Furthermore, and as is the case here, Administrative/Professional Faculty are often employed under a contract with specific terms, which is distinguished from normal classified state employment. Employees working as Administrative/Professional Faculty presumably receive the benefits of the faculty (non-tenured) employment system. Hence, it could be argued that such employees should not receive the benefits of both the faculty system and the classified system with access to the state grievance procedure.⁵

In this instance, the grievant was employed by the University in an Administrative/Professional Faculty position, and thus he does not have access to the state employee grievance procedure. As such, the dismissal grievance filed by the grievant with EEDR is unable to proceed and the file will be closed.

EEDR’s rulings on access are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁴ See EDR Ruling No. 2013-3477; see also DHRM Policy 2.20, *Types of Employment* (defining a “non-covered employee” as a “salaried employee who is not subject to the [VPA] ... [i]nclud[ing] ... administrative and professional faculty).”

⁵ Based on the information provided by the agency, it appears the grievant has access to the agency’s faculty grievance procedure, and he should be permitted to pursue his grievance under the provisions of that process. EEDR encourages the parties to address his concerns through that process, but ultimately has no authority to determine eligibility, compliance with, or the parameters of the agency’s faculty grievance procedure.

⁶ Va. Code § 2.2-1202.1(5).