

Issue: Qualification – Discipline (Notice of Intent); Ruling Date: August 22, 2013;  
Ruling No. 2014-3696; Agency: Department of Behavioral Health and Developmental  
Services; Outcome: Not Qualified.



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

**QUALIFICATION RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2014-3696  
August 22, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether her May 15, 2013 grievance initiated with the Department of Behavioral Health and Developmental Services (“agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The May 15, 2013 grievance at issue challenges a Notice of Intent of proposed disciplinary action, or “due process letter,” received by the grievant on or about May 9, 2013. The grievant alleges that she is being unfairly blamed for another employee’s failure to do his work over a certain period of time. The proposed discipline, a Group II Written Notice, was issued to the grievant later in the day on May 15, 2013, and appears to be the subject of a separate grievance also filed on May 15, 2013. This ruling addresses only the grievance filed prior to the issuance of the Group II Written Notice.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>1</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state policy may have been misapplied or unfairly applied.<sup>3</sup>

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<sup>1</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>2</sup> See Va. Code § 2.2-3004(B).

<sup>3</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>4</sup> Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a “tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”<sup>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>6</sup>

The management action challenged in this grievance, a Notice of Intent to issue discipline, or due process letter, is not equivalent to a Written Notice of formal discipline. Such memoranda do not generally constitute adverse employment actions, because such actions, in and of themselves, do not have a significant detrimental effect on the terms, conditions, or benefits of employment.<sup>7</sup> As such, the grievant’s challenge to the May 9, 2013 Notice of Intent does not qualify for a hearing.<sup>8</sup>

EDR’s qualification rulings are final and nonappealable.<sup>9</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>4</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>5</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>6</sup> See, e.g., *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007).

<sup>7</sup> See *Boone v. Goldin*, 178 F.3d 253 (4<sup>th</sup> Cir. 1999).

<sup>8</sup> We note that, should the due process letter grieved in this case later serve to support an adverse employment action against the grievant, such as a formal Written Notice, this ruling does not prevent the grievant from attempting to contest the merits of these allegations through a subsequent grievance challenging the related adverse employment action. In this instance, it appears the grievant has already done so.

<sup>9</sup> Va. Code § 2.2-1202.1(5).