

Issue: Access to the Grievance Procedure; Ruling Date: September 26, 2013;
Ruling No. 2014-3719; Agency: State Board of Elections; Outcome: Access Denied.



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

ACCESS RULING

In the matter of the State Board of Elections
Ruling Number 2014-3719
September 26, 2013

The grievant has requested that the Office of Employment Dispute Resolution (EDR) issue a ruling on whether he has access to the grievance procedure in order to challenge his separation from the State Board of Elections (the agency). For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate a grievance.

FACTS

The grievant began working with the agency on February 19, 2013 in a classified position. While a three-month probationary progress review indicated that the grievant's work was meeting or exceeding expectations, a subsequent performance review indicated deficiencies in the grievant's performance that led the agency to terminate his employment due to not successfully completing the probationary period. On September 23, 2013, the grievant was issued a termination letter. The grievant subsequently filed a dismissal grievance directly with EDR to challenge his termination.

DISCUSSION

Department of Human Resource Management (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."¹ The grievant had not completed his twelve-month probationary period when he was terminated on September 23, 2013. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge his termination.⁴


¹ DHRM Policy 1.45, *Probationary Period*.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ E.g., EDR Ruling No. 2005-1032.

⁴ While the grievant does not have access to file a grievance, there may be other options available to him. For instance, "[a] probationary employee who claims that termination or other disciplinary action was based on race, sex, color, national origin, religion, sexual orientation, age, political affiliation, veteran status, or disability may file

EDR's access rulings are final and nonappealable.⁵



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Director
Office of Employment Dispute Resolution

a discrimination complaint with the Office of Equal Employment Services (OEES) in the Department of Human Resource Management or other agencies as appropriate.” DHRM Policy 1.45, *Probationary Period*. OEES can be contacted by calling 1-800-533-1414 or (804) 225-2136.

⁵ Va. Code § 2.2-1202.1(5).