Issue: Qualification – Work Conditions (supervisor/employee conflict); Ruling Date: November 25, 2013; Ruling No. 2014-3751; Agency: Department of Juvenile Justice; 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 Juvenile Justice
Ruling Number 2014-3751
November 25, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether the two grievances she initiated on or about June 27, 2013 and August 16, 2013 with the Department of Juvenile Justice (the agency) qualify for a hearing. For the reasons discussed below, neither grievance qualifies for a hearing.

FACTS

The June 27, 2013 grievance alleges a lack of support from the agency for its employees, lack of services for the students served by the agency, and continuous harassment of the grievant. The August 16, 2013 grievance alleges further workplace harassment and retaliation. In support of her position, the grievant cites to constant meetings she is required to attend, wherein she believes management is attempting to interfere with her performance of her job duties and force her to resign. In response, the agency denies each of the grievant's assertions.

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.[1] Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[2] 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.[3]

[1] *See Grievance Procedure Manual* §§ 4.1 (a), (b).
[2] *See* Va. Code § 2.2-3004(B).
[3] *Id.* at § 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."[4] 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."[5] Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.[6]

Both the June 27 and August 16 grievances allege a continuing pattern of harassment or hostile work environment to which the grievant asserts she is being subjected. In the analysis of such a claim, the "adverse employment action" requirement is satisfied if the facts raise a sufficient question as to whether the conduct at issue was sufficiently severe or pervasive so as to alter the conditions of employment and to create and abusive or hostile work environment.[7] "[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."[8]

After reviewing the facts as presented by the grievant, EDR cannot find that the grieved management actions rose to a sufficiently severe or pervasive level to create an abusive or hostile work environment.[9] The June 27, 2013 grievance claims that agency management demonstrates a lack of support and caring, and fails to serve its students appropriately. Similarly, the August 16, 2013 grievance claims that management resists the grievant's attempts to fulfill her job responsibilities, requiring her to attend over sixteen meetings since April of 2013, in an attempt to cause her to resign. Even taking these assertions as true, prohibitions against harassment do not provide a "general civility code" or prevent all offensive or insensitive conduct in the workplace.[10] The agency's actions in meeting with the grievant appear to reflect an attempt by management to address issues the grievant may have experienced within her classroom. There is no indication that the terms, conditions, or benefits of the grievant's employment were detrimentally impacted by the grievant's attendance at meetings with agency management, or by management's failing to provide the grievant with appropriate support and services within her classroom. EDR has reviewed no information presented by the grievant that demonstrates that management has attempted to force grievant to resign. Because the grievant has not raised a

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[4] *See Grievance Procedure Manual* § 4.1(b).
[5] Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).
[6] *See, e.g.,* Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007).
[7] *See generally* Gillam v. S.C. Dep't of Juvenile Justice, 474 F.3d 134, 142 (4th Cir. 2007).
[8] Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993).
[9] To the extent that the grievant's allegations could be read as claims of discrimination, the grievant has not asserted any protected status on which such a claim could be based. *See* DHRM Policy 2.30, *Workplace Harassment* (defining "Workplace Harassment" as conduct that is based on "race, sex, color, national origin, religion, age, veteran status, political affiliation, or disability").
[10] Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) ("[C]onduct must be extreme to amount to a change in the terms and conditions of employment . . . ."); *see* Hopkins v. Balt. Gas & Elec. Co., 77 F.3d 745, 754 (4th Cir. 1996).

sufficient question as to the existence of an abusive or hostile work environment, the grievance does not qualify for a hearing on this basis.

We note that the grievant has experienced adverse employment action in the form of disciplinary notices and subsequent termination, each of which are the subject of separate grievances already qualified for a hearing. To the extent that the grievant's claims presented here support her argument as to why the discipline and termination may be inappropriate, she is free to raise all of these allegations accordingly in her other grievances.[11]

Finally, with respect to the grievant's claim that both of the grievances at issue allege a misapplication of policy, EDR has found no mandatory policy provision that the agency has violated. For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Here, the grievant asserts that the agency has violated DHRM Policies 1.25 (*Hours of Work*), 1.40 (*Performance Planning and Evaluation*) and 1.60 (*Standards of Conduct*). EDR has conducted a thorough review of the information presented by the grievant, and we are unable to find any indication of how the grievant even argues that the agency violated these policies in any way. The grievances do not qualify for hearing on any of these bases.

EDR's qualification rulings are final and nonappealable.[12]

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Director
Office of Employment Dispute Resolution

[11] Regarding the grievant's claims of retaliation, we cannot find that the grievant presents information that demonstrates a sufficient question may exist regarding whether there was a causal link between any protected activity and the actions grieved here. However, this argument may also be raised in a challenge to formal disciplinary action, including the grievant's termination.

[12] Va. Code § 2.2-1202.1(5).