

Issue: Compliance – Grievance Procedure (Access); Ruling Date: August 8, 2014;  
Ruling No. 2015-3963; Agency: Virginia Polytechnic Institute and State University;  
Outcome: Grievant Not in Compliance.



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

**COMPLIANCE RULING**

In the matter of Virginia Polytechnic Institute and State University  
Ruling Number 2015-3963  
August 8, 2014

On August 1, 2014, the grievant submitted a dismissal grievance to the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”). For the reasons set forth below, EDR concludes that the grievance is not in compliance with the grievance procedure.

The grievant was previously employed by Virginia Polytechnic Institute and State University (the “University”). He was removed from employment in February 2014, after receiving an annual performance evaluation rating of “Unacceptable Performance” and a subsequent “Unacceptable Performance” rating at his reevaluation.<sup>1</sup> In a hearing decision dated June 11, 2014, the hearing officer found that the grievant’s annual performance evaluation rating was arbitrary and capricious because it only considered his work during part of the performance cycle.<sup>2</sup> The hearing officer therefore directed the University to repeat the annual performance evaluation and consider the grievant’s performance for the entire performance cycle.<sup>3</sup> The hearing officer further held that if the University were to conclude that the grievant’s performance remained unacceptable on the new annual performance evaluation, the grievant’s removal was upheld.<sup>4</sup> The grievant states that on or about July 2, 2014, he received a new annual performance evaluation from the University. That evaluation, like the initial evaluation, rated his overall performance as “unacceptable.” On August 1, 2014, the grievant initiated a dismissal grievance challenging his new evaluation.

The July 2, 2014 performance evaluation being challenged in the grievant’s dismissal grievance was issued by the University in order to implement the hearing officer’s decision in a previous grievance. Section 2.4 of the *Grievance Procedure Manual* provides that while any management actions or omissions may generally be grieved, a grievance may not challenge an “agency’s implementation of or failure to implement a hearing officer’s decision.” Instead, an employee must “petition the circuit court having jurisdiction . . . for an order requiring implementation of the final decision of a hearing officer.”<sup>5</sup> As the grievance in this case challenges the University’s implementation of an earlier hearing decision, the grievance will be closed and will not proceed to a hearing. To the extent the grievant seeks relief regarding the

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<sup>1</sup> Hearing Decision in Case No. 10332/10333, June 11, 2014 (“Hearing Decision”), at 1.

<sup>2</sup> *Id.* at 9-11.

<sup>3</sup> *Id.* at 10-11.

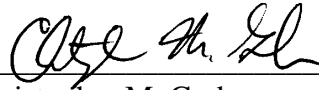
<sup>4</sup> *Id.* at 11.

<sup>5</sup> Va. Code § 2.2-3006(D); *Grievance Procedure Manual* §§ 2.4, 7.3(c).

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July 2 performance evaluation, he must seek such relief by initiating an action for implementation in the appropriate circuit court.

EDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>6</sup> Va. Code § 2.2-1202.1(5).