

Issue: Qualification – Discipline (Counseling Memo); Ruling Date: August 4, 2015;  
Ruling No. 2016-4204; Agency: Department of Juvenile Justice; Outcome: No  
Ruling – Waived.



**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 2016-4204  
August 4, 2015

The Department of Juvenile Justice (the agency) has requested a ruling on whether the grievant's dismissal grievance fully qualifies for a hearing. The agency argues that the grievant has challenged a Notice of Improvement Needed in addition to the Group II Written Notice that led to his termination. The agency argues that issues regarding the Notice of Improvement Needed should not be qualified for a hearing.

The grievant submitted the grievance on July 1, 2015, and the agency received notice that it had been filed on the following day. The Office of Employment Dispute Resolution (EDR) has already appointed a hearing officer to hear this case. In so doing, EDR indicated that the grievance qualified in full, which the agency received on July 17. The agency first raised this objection to qualification on August 3. Consequently, given the delay in raising this objection and the fact the case has already been appointed to a hearing officer and qualified in full, the agency will be considered to have waived its objection to the qualification.

The agency's objection is accurate, however, in that a challenge to a Notice of Improvement Needed does not normally qualify for a hearing.<sup>1</sup> Written counseling, like a Notice of Improvement Needed, does not generally constitute an adverse employment action, because such an action, in and of itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment.<sup>2</sup> Nevertheless, for the reasons discussed above and below, allowing this matter to proceed as appointed does not appear to be so significant such that either party or the hearing officer will be unreasonably burdened.<sup>3</sup>

Although EDR declines to refine the issues qualified for a hearing in this ruling, we are hopeful that the parties can come to an agreement on what matters should be the focus of the hearing and/or that the hearing officer can be judicious in the handling of the Notice of Improvement Needed matter for the sake of expediency of this case. The parties and hearing

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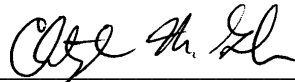
<sup>1</sup> *E.g.*, EDR Ruling No. 2015-4007.

<sup>2</sup> *See* Boone v. Goldin, 178 F.3d 253 (4th Cir. 1999). The grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions," *see* *Grievance Procedure Manual* § 4.1(b), i.e., actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment. *See, e.g.*, Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007).

<sup>3</sup> Indeed, it may be that these claims are significantly intertwined such that the full qualification will provide an opportunity for the development of the entirety of the facts and issues at play.

officer should also be aware that there is very little relief available to be provided on the Notice of Improvement Needed unless it is determined to be discriminatory, retaliatory, or violates state or agency policy, for example.<sup>4</sup> As such, given that the issue of the Notice of Improvement Needed is of minor import to this case, EDR cannot find that sufficient exigencies exist to undo the previous determination that the grievance is qualified in full after it has already been appointed to a hearing officer.

EDR's rulings on qualification and compliance are final and nonappealable.<sup>5</sup>



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<sup>4</sup> See *Grievance Procedure Manual* §§ 5.9(a), (b).

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