



EMILY S. ELLIOTT  
DIRECTOR

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

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

**ACCESS and COMPLIANCE RULING**

In the matter of the Virginia Information Technologies Agency  
Ruling Number 2020-4973  
September 20, 2019

The Virginia Information Technologies Agency (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management<sup>1</sup> (“DHRM”) on whether the grievant has access to the grievance procedure.

FACTS

On June 7, 2019, the grievant received two Group II Written Notices. She filed two grievances with the agency, each challenging one of the Written Notices, on July 2. A third step response addressing both grievances was issued to the grievant on or about August 1. The grievant subsequently resigned from her position with the agency as of August 10. The agency requested an access ruling from EDR on August 26, arguing that the grievant no longer has access to the grievance procedure because she voluntarily resigned from employment with the agency.

DISCUSSION

The General Assembly has provided that “[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure . . . .”<sup>2</sup> The *Grievance Procedure Manual* further provides that, to have access to the grievance procedure, an employee

1. Must not be listed as exempt from the Virginia Personnel Act under § 2.2-2905 of the Code of Virginia;
2. Must have been a non-probationary employee of the Commonwealth at the time the management action or omission that formed the basis of the dispute occurred; and,

---

<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> Va. Code § 2.2-3001(A).

3. Must not have voluntarily concluded his/her employment with the Commonwealth prior to initiating the grievance.<sup>3</sup>

There is no dispute in this case that the grievant satisfied each of these three criteria. She was not exempt from the Virginia Personnel Act. She was not a probationary employee at the time she received the Written Notices on June 7, 2019. She had not voluntarily resigned from employment with the agency prior to initiating her grievances on July 2. Accordingly, EDR finds that the grievant has access to the grievance procedure to continue with her two grievances, and they must be permitted to proceed.

Nonetheless, an employee's decision to resign after initiating a grievance could, depending on the circumstances, render challenges to certain management actions or omissions moot.<sup>4</sup> In that situation, EDR would consider an agency's request to administratively close a former employee's grievance, in part, on the theory that a grievance may not be "used to . . . impede the efficient operations of government."<sup>5</sup> More importantly in this case, however, EDR contacted the grievant while this ruling was pending to determine whether she wishes to continue with her grievances. The grievant has confirmed to EDR that she does not wish to proceed with the grievances. EDR, therefore, considers the grievances concluded.

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



---

Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

---

<sup>3</sup> *Grievance Procedure Manual* § 2.3.

<sup>4</sup> For example, the relief available through the grievance process in some cases would be meaningless if a grievant is no longer employed by the agency. *See, e.g.*, EDR Ruling No. 2018-4722; EDR Ruling No. 2018-4724; EDR Ruling No. 2018-4586.

<sup>5</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4. In cases involving an agency's issuance of formal disciplinary action (i.e., a Written Notice), however, it cannot be said that an employee's intervening resignation would render a challenge to the discipline moot. Even if a grievant resigns from an agency, any Written Notices remain in their personnel file at the agency and are transferred to their personnel file at any future agency for which they might work. DHRM Policy 1.60, *Standards of Conduct*, § G(1)(c) ("Written Notices shall be kept in employees' agency personnel files, including those that are no longer active."); DHRM Policy 6.10, *Personnel Records Management* (stating that transferred personnel files "shall contain . . . [o]riginal Written Notice forms"). Moreover, a grievance challenging the issuance of formal discipline that is not resolved during the management steps automatically qualifies for a hearing. *Grievance Procedure Manual* § 4.1(a).

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