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## QUALIFICATION RULING

In the matter of the Virginia Community College System  
Ruling Number 2020-4975  
September 13, 2019

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Virginia Department of Human Resource Management (“DHRM”) on whether her June 26, 2019 grievance with the Virginia Community College System (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance is not qualified for a hearing.

### FACTS

Between February and May 2019, the grievant submitted a series of letters to the community college at which she worked, indicating her intent to resign later in the year. The final letter, dated May 20, set the effective date of her resignation as July 1.<sup>2</sup> On June 12, the grievant sent an email to the agency asking to withdraw her resignation and remain employed by the college until January 1, 2020 “due to financial reasons.” After discussing the matter with her, management notified the grievant on June 26 that her request to withdraw her resignation was denied. In support of its decision, the agency explained to the grievant that it had decided to restructure her position after her resignation due to business needs at the community college. As a result, the grievant was separated from employment with the agency on July 1.

The grievant initiated a grievance on June 26, 2019, challenging the agency’s decision not to allow her to withdraw her resignation and requesting, as relief, to “continue [her] employment with the College in [her] current position” or, “in the event of restructuring [in her] department,” to continue working for the community college in another capacity. Following the management resolution steps, the agency head declined to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

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<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> It appears the changes to the date of the grievant’s resignation were related to her retirement benefits and the agency’s efforts to fill her position after her resignation became effective.

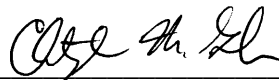
## DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> Thus, by statute and under the grievance procedure, complaints relating solely to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.<sup>4</sup> The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant’s claims could only qualify for hearing based upon a theory that the agency has misapplied or unfairly applied policy.

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. DHRM Policy 1.70, *Termination/Separation from State Service*, allows—but does not require—an agency to “accept an employee’s request to rescind his or her resignation within 30 calendar days of separation.” In this case, there appears to be no dispute that the grievant voluntarily submitted a notice of resignation to the agency setting an effective date of July 1, 2019, and that the agency actually received the grievant’s resignation. The agency’s decision to approve a withdrawal is discretionary. Thus, the agency’s choice not to accept the grievant’s request to rescind her resignation in this case is not, by itself, a violation of the policy.<sup>5</sup>

The grievant understandably disagrees with the agency’s decision in this case, and EDR is sympathetic to her concerns; having conducted a thorough review of the information in the grievance record, however, EDR finds that the grievant has not raised a sufficient question as to whether the agency misapplied and/or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding the resignation of employees, or was otherwise arbitrary or capricious. Under the circumstances presented in this case, it appears that the agency’s decision not to accept the grievant’s request to rescind her resignation fell within the scope of the discretion granted under DHRM Policy 1.70. Accordingly, the grievance does not qualify for a hearing on this basis.

EDR’s qualification rulings are final and nonappealable.<sup>6</sup>



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<sup>3</sup> See Va. Code § 2.2-3004(B).

<sup>4</sup> *Id.* § 2.2-3004(C); See *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>5</sup> If agency management refused the grievant’s request to rescind her resignation for a discriminatory or retaliatory reason, or on some other basis that is prohibited by policy and/or law, such a separation could raise a sufficient question warranting qualification of the grievance for a hearing. As stated above, however, the grievant has not alleged that the agency’s decision was based on a discriminatory or retaliatory motive here.

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