

Issue: Access to the Grievance Procedure; Ruling Date: November 3, 2016; Ruling No. 2017-4430; Agency: Virginia State University; Outcome: Access Denied.



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

**ACCESS RULING**

In the matter of Virginia State University  
Ruling Number 2017-4430  
November 3, 2016

On October 11, 2016, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a dismissal grievance initiated by the grievant to challenge her separation from employment. The grievant’s former employer, Virginia State University (“VSU” or the “University”), claims that the grievant does not have access to the grievance procedure because she was a faculty member with access to the University’s faculty grievance process. For the reasons set forth below, EDR concludes that the grievant does not have access to the state employee grievance procedure.

**FACTS**

The grievant was employed as an Assistant Professor with the University. On or about June 30, 2016, the grievant was given written notice of the University’s intent to terminate her employment contract for cause. On July 15, 2016, pursuant to the University’s faculty grievance procedure, the grievant initiated a grievance with the University’s Appeals Subcommittee of the Faculty Senate Committee on Reconciliation (“Subcommittee”) to challenge the termination of her contract. A hearing before the Subcommittee was held on July 28, 2016, and on August 19, 2016 the Subcommittee issued a written decision. In its decision, the Subcommittee determined that the grievant should not be terminated, as the University failed to prove that the grievant’s actions were taken fraudulently and with the intent to deceive. However, on September 12, 2016, the University’s President sent a letter to the grievant, indicating that he did not agree with the findings of the Subcommittee and would proceed with the grievant’s termination.

On October 11, 2016, the grievant initiated a grievance directly with EDR to challenge her separation from employment. In her grievance, she requests access to the Commonwealth’s grievance procedure, alleging that inequities in the University’s process effectively denied her access to the University’s grievance procedure. In response, the agency asserts that the grievant is not eligible to utilize the Commonwealth’s grievance procedure, and seeks a ruling from EDR that the grievant does not have access to do so.

### DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.<sup>1</sup> Generally speaking, employees who are in positions designated as exempt from the Virginia Personnel Act (VPA) do not have access to the grievance procedure.<sup>2</sup> Specifically, pursuant to Section 2.2-2905(8) of the Code of Virginia, “teaching and research staffs of state educational institutions” are exempted from the VPA. In this instance, it is not disputed that the grievant performed teaching and research duties at the University. However, the grievant asserts a basis to allow her access to the Commonwealth’s grievance procedure exists in this instance, because, she argues, the University demonstrated “an arbitrary disregard for fundamental fairness and impartiality” during the grievant’s use of its process. She further argues that she was denied due process in the University’s grievance proceedings because of the University’s disregard of evidence she presented that would show egregious conduct and policy violations by her Department Chair with respect to her termination.

In support of her argument that she was denied due process by the faculty grievance procedure, the grievant provided documentation to EDR regarding the substance of evidence she presented at her hearing in front of the Subcommittee. The substance of these allegations, if true and unaddressed by the University, are troubling. Combined with these concerns and the Subcommittee’s analysis of the facts of the case, the decision provided by the Subcommittee appears to represent a more sensible result in this matter, but EDR ultimately has no jurisdiction to address the grievant’s termination substantively. To the extent the grievant raises valid arguments regarding her termination, denial of due process, and other concerns, the forum for redress potentially available may be through the court system.

The Code of Virginia explicitly excludes the grievant from those employees with access to the Commonwealth’s grievance procedure, and EDR simply has no ability to allow exceptions to the provisions of the VPA. Therefore, EDR must conclude that the grievant, as a teaching faculty member of the University, is exempted by law from coverage under the state employee grievance procedure and cannot be granted access to the state grievance procedure.

EDR’s access rulings are final and nonappealable.<sup>3</sup>



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<sup>1</sup> Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

<sup>2</sup> Va. Code §§ 2.2-2905, 2.2-3002.

<sup>3</sup> *Id.* § 2.2-1202.1(5).