



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

ACCESS RULING

In the matter of the Virginia Community College System
Ruling Number 2021-5201
January 26, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his two January 7, 2021 grievances with the Virginia Community College System (the “agency”) are in compliance with the grievance procedure.

FACTS

The grievant works at one of the agency’s community colleges in a teaching faculty position. On or about January 7, 2021, the grievant initiated two grievances with the agency challenging specified management actions.¹ Although he submitted both grievances on the Grievance Form A, used for initiating a grievance through the state employee grievance procedure, the agency considered the grievant to have filed both grievances using its faculty grievance process, to which he has access.

The agency notified the grievant on January 15 that both grievances were ineligible for its faculty grievance process: one grievance was untimely, and the other grievance challenged a management action that was not subject to the agency’s faculty grievance procedure. The grievant disagrees with the agency’s decision and appeals to EDR for a ruling on whether the grievances may proceed.

¹ One of the grievances appears to be filed on behalf of three employees, one of whom is the grievant, as a joint grievance. This does not impact EDR’s conclusion that the grievant does not have access to the state employee grievance procedure as discussed in this ruling, but generally a grievance must be filed by one employee about management actions relating to their own employment. *See Grievance Procedure Manual* § 2.4. This ruling addresses the grievant’s request for a compliance ruling as to his involvement in both grievances. The other two employees listed on the joint grievance have not contacted EDR directly and, therefore, we are not directing this ruling to those individuals. However, the outcome of such a ruling would be the same as to the other two individuals as they also appear to be employed as teaching faculty at the community college.

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.² Generally speaking, employees who work in positions designated as exempt from the Virginia Personnel Act (“VPA”) do not have access to the grievance procedure.³ “[T]eaching and research staffs of state educational institutions” are exempt from the VPA.⁴ Because the grievant is employed in a teaching faculty position, he does not have access to the state employee grievance procedure.

The agency has adopted a grievance process for its teaching faculty,⁵ and this case arises out the agency’s determination that the grievant’s two faculty grievances were not eligible to proceed through its faculty grievance process. EDR’s authority to rule on grievance matters, however, extends only to issues concerning the state employee grievance procedure.⁶ As a result, we cannot review the agency’s decision here. Accordingly, we find only that the grievant does not have access to the state employee grievance procedure because he is a member of the agency’s teaching faculty.⁷

EDR’s access rulings are final and nonappealable.⁸

Christopher M. Grab
Director
Office of Employment Dispute Resolution

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ Va. Code §§ 2.2-2905, 2.2-3002.

⁴ *Id.* § 2.2-2905(8); see DHRM Policy 2.20, *Types of Employment*, at 1, 5 (describing “teaching, research, administrative and professional faculty” as “non-covered employees” whose terms and conditions of employment “are established by their agencies, the agencies’ governing bodies, or the Governor”).

⁵ See Virginia Community College System Policy Manual § 3.13, *Alternative Dispute Resolution and Grievance Procedures*.

⁶ See Va. Code § 2.2-1202.1.

⁷ This ruling only determines that the grievant lacks access to the state employee grievance procedure. It does not address, and has no bearing on, whether other legal or equitable remedies are available to the grievant in another forum.

⁸ Va. Code § 2.2-1202.1(5).