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ACCESS RULING

In the matter of the University of Virginia
Ruling Number 2021-5224
March 3, 2021

On February 26, 2021, 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 his separation from employment. The grievant’s former employer, the University of Virginia (the “university”), challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

On or about January 29, 2021, the grievant received notice that his position with the university was being eliminated effective February 1. On February 26, the grievant initiated a dismissal grievance with EDR, challenging his separation on the basis that it was inconsistent with the university’s policy regarding the employment of Administrative and Professional Faculty. The university asserts that, because the grievant worked in an Administrative and Professional Faculty position, he does not have access to the state employee grievance procedure.

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.¹ Generally speaking, employees who are employed in positions designated as exempt from the Virginia Personnel Act (“VPA”) do not have access to the grievance procedure.² When the General Assembly adopted the Restructured Higher Education Financial and Administrative Operations Act in 2005, institutions of higher education like the university were given approval to designate “positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field” as administrative and professional faculty; this provision was included within the VPA.³ Accordingly, the *Grievance Procedure Manual* specifies that employees who work in Administrative and Professional Faculty positions do not have access to the state employee grievance procedure.⁴

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

² Va. Code §§ 2.2-2905, 2.2-3002.

³ *Id.* § 2.2-2901(E).

⁴ *Grievance Procedure Manual* § 2.3. EDR has consistently held that Administrative and Professional Faculty at institutions of higher education are exempt from the VPA and do not have access to the grievance procedure. *See, e.g.*, EDR Ruling No. 2020-5089; EDR Ruling No. 2019-4840; EDR Ruling No. 2013-3477; *see also* DHRM Policy 2.20,

Moreover, Administrative and Professional Faculty are often employed under a contract with specific terms, which is distinguished from normal classified state employment. Employees working as Administrative and Professional Faculty presumably receive the benefits of the faculty (non-tenured) employment system. Hence, it could be argued that such employees should not receive the benefits of both the faculty system and the classified system with access to the state employee grievance procedure.⁵

In this case, the grievant was employed in an Administrative and Professional Faculty position prior to his separation. Indeed, the principal subject of the grievance appears to be the university's nonrenewal of the grievant's contract, which the grievant argues was inconsistent with university policy. Although he may be raising legitimate concerns about his separation, the grievant does not have access to the state employee grievance procedure to address this matter through a grievance hearing. As such, the dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.⁶

EDR's access rulings are final and nonappealable.⁷

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Types of Employment (defining a “non-covered employee” as a “salaried employee who is not subject to the [VPA] . . . [i]nclud[ing] . . . administrative and professional faculty).”

⁵ It appears the grievant has access to the university's faculty grievance procedure, and he should be permitted to pursue his grievance through that process. Though EDR encourages the parties use that process for addressing the grievant's concerns, we ultimately have no authority to determine eligibility for, compliance with, or the parameters of the university's faculty grievance procedure.

⁶ 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 may be available to the grievant in another forum.

⁷ Va. Code § 2.2-1202.1(5).