

Issue: Qualification/discipline/Group I for disruptive behavior and unsatisfactory performance; Ruling #2007-1415; Ruling Date: August 10, 2006; Agency: Virginia Western Community College; Outcome: grievance qualified for hearing.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Virginia Western Community College/ No. 2007-1415
August 10, 2006

The grievant has requested a ruling on whether her July 5, 2006 grievance with the Virginia Western Community College (the agency) qualifies for a hearing. The grievant challenges the issuance of a Group I Written Notice. As discussed below, this grievance qualifies for a hearing.

FACTS

The grievant is an Administrative and Office Specialist III with the agency. On June 8, 2006, management issued the grievant a Group I Written Notice (Written Notice) for disruptive behavior and unsatisfactory performance. On July 5, 2006, she timely initiated a grievance requesting the removal of the Written Notice. The grievance advanced through the management resolution steps and on August 2, 2006, the grievant advanced her grievance to the qualification phase for the agency head to determine whether the issue presented qualified for a hearing. Subsequently, the agency head denied qualification, asserting that the agency's actions were fairly and appropriately administered in accordance with policy.

DISCUSSION

The Commonwealth's policy "as an employer, [is] to encourage the resolution of employee problems and complaints."¹ To that end, the General Assembly has determined that "the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employee who have access to the procedure."² While most grievances may proceed through the management resolution steps if the grievant so chooses,³ only grievances that challenge certain actions can proceed to a hearing before a hearing officer.⁴

¹ Va. Code § 2.2-3000(A).

² *Id.*

³ If the employee does not have access to the grievance procedure at the time of the initiation of the grievance, then management is not required to proceed with the resolution step process. *See Grievance*

In this case, the grievant challenges a disciplinary action by management -- the issuance of a Written Notice. By statute and under the grievance procedure, all formal disciplinary actions (i.e., Written Notices and those suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline) *automatically* qualify for a hearing.⁵ Therefore, while the agency contends that management's actions were warranted and appropriate under the given circumstances, the grievant is entitled by statute and the grievance procedure to advance this grievance to a hearing, at which time each party may present their case.

CONCLUSION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. Additionally, please note that this qualification ruling is not a determination regarding the merits of the grievant's claim.

Claudia T. Farr
Director

Procedure Manual § 2.3; see also *Grievance Procedure Manual* § 2.4, for instances where the agency may administratively close a grievance for noncompliance with the grievance procedure.

⁴ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(a)-(c). For purposes of determining qualification for a hearing, agency actions are divided into three categories: Actions Which *Automatically* Qualify, Actions Which *May* Qualify and Actions Which *Do Not* Qualify.

⁵ *Id.* Dismissals for unsatisfactory performance also automatically qualify for a hearing.