

Issue: Compliance/Grievance Procedure/Access; Ruling Date: January 25, 2007; Ruling #2007-1533; Agency: Virginia Polytechnic Institute and State University; Outcome: access granted



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***  
**COMPLIANCE RULING OF DIRECTOR**

In the matter of Virginia Polytechnic Institute and State University  
Ruling Number 2007-1533  
January 25, 2007

The grievant has requested a compliance ruling in his November 17, 2006 grievance with Virginia Polytechnic Institute and State University (Virginia Tech or the agency).

**FACTS**

The grievant is employed in the agency's Office of University Scholarships and Financial Aid. On October 27, 2006, he received a Group I Written Notice for "Inadequate or Unsatisfactory Job Performance." He further asserts that at the same time he received the Written Notice, he was also issued a counseling memorandum regarding a perceived conflict of interest and was in effect demoted through a removal of job duties.

The grievant subsequently initiated a grievance challenging the October 27, 2006 Written Notice, the counseling memorandum, and the change in job duties. As relief, the grievant asked in his grievance that: (1) the Written Notice be removed from his record; (2) the counseling memo be removed from his file (including the "removal of the suggestion that [he] receive counseling for alleged 'conflict of interest'"); (3) his "full position of Private Loan Coordinator and administrator of ELM be returned to [him]"; (4) his duties and responsibilities as coordinator of private loans be "returned in full"; (5) the alleged harassment and public discussions about his purported conflict of interest be discontinued; (6) an e-mail be sent to those staff who were notified of his change in job duties stating that he has been fully reinstated to his original position and duties; and (7) mail addressed to him be forwarded to him and not held or monitored by office staff or management.

On December 4, 2006, the first-step respondent advised the grievant that of his requested relief, only the relief regarding the Written Notice was grievable. The first-step respondent denied the grievant's request for relief on the Written Notice, as well as any relief on those items the first-step respondent identified as non-grievable. By letter dated December 8, 2006, the grievant notified the agency head that the first-step respondent's actions were not in compliance with the *Grievance Procedure Manual* and requested access to the grievance procedure for all three issues identified in his November 17th grievance. By letter dated December 15, 2006, the agency head advised the grievant that "[a]t this point in the grievance process, it would be inappropriate for [him] to rule on whether the issues [the grievant] raised

in [his] grievance will qualify for a hearing before a grievance hearing officer.” The agency head also informed the grievant that he needed to present the issues he wished to raise through the remaining management steps.

On January 9, 2007, the grievant requested a compliance ruling from this Department. He asserts that the agency is in error with respect to its “contention that only the written notice is grievable,” and he asks to be granted access to the grievance process for his challenge to the counseling memorandum and change of job duties.

### DISCUSSION

Under the grievance procedure, while only certain issues may be qualified for a hearing, *any* issue which pertains directly and personally to the grievant’s own employment may be grieved through the management resolution steps.<sup>1</sup> As explained further in the FAQ section of this Department’s website, there are no limits on what issues may be grieved, at least through the management resolution steps, so long as the grievance is filed within 30 calendar days of the event being grieved; arises in the agency in which the employee works; pertains directly and personally to the employee’s own employment; is not used to harass or disrupt agency business; has not been pursued through another state process; and, finally, does not challenge the same management action challenged by another grievance.

The issues raised by the grievant with respect to the counseling memorandum and change of job duties clearly pertain directly and personally to his employment. These issues are therefore unquestionably grievable.<sup>2</sup> We note that in determining whether claims may be grieved, an agency should look to the issues presented by the grievance, not the relief sought: that the relief requested by a grievant may not ultimately be available through a grievance hearing officer is irrelevant to the grievability of the issues raised, through the management steps and agency head qualification determination.

Accordingly, this Department finds that the agency’s conclusion (that the grievant’s claims regarding the counseling memorandum and change in job duties were not grievable) is erroneous under the grievance procedure. The grievant and the agency are advised that the grievant has 10 workdays from the date of this ruling to advance his grievance to the second resolution step, at which point the agency must address all issues raised by the grievance.

This Department’s rulings on matters of compliance are final and nonappealable.<sup>3</sup>

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Claudia T. Farr

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<sup>1</sup> *Grievance Procedure Manual* § 2.4.

<sup>2</sup> The agency has not asserted any other basis on which the grievant has failed to comply with the grievance procedure (*e.g.*, that the grievance is duplicative or untimely).

<sup>3</sup> Va. Code § 2.2-1001(5).

Director