

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: April 22, 2008; Ruling #2008-2009; Agency: Virginia Community College System; Outcome: Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
QUALIFICATION AND COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Community College System
Ruling No. 2008-2009
April 22, 2008

On April 11, 2008, this Department (EDR) received the grievant's request for qualification of her October 24, 2007 grievance with the Virginia Community College System (VCCS or the agency). For the reasons set forth below, the request sent to this Department is premature at this time and will be returned to the agency for further action.

FACTS

The grievant initiated this grievance on October 24, 2007. The third resolution step-respondent provided written responses in the form of a letter dated March 14, 2008 and a statement on the Form A dated March 19, 2008. The grievant then returned the Form A to her College on or about April 4, 2008, requesting qualification of the grievance for hearing. On April 11, 2008, the College submitted documentation to EDR indicating that the grievant is requesting that the grievance be qualified for a hearing. However, the agency head has not yet issued a qualification decision.

DISCUSSION

Pursuant to Section 3.3 of the *Grievance Procedure Manual*, after receiving the third resolution step response, a grievant can request that the agency head qualify the grievance for hearing. It appears the grievant made such a request, as indicated by her notations on the Form A. "Within 5 workdays of receiving the employee's hearing request, the agency head must determine whether the grievance qualifies for a hearing. The agency head must provide a written response on the grievance 'Form A' or an attachment."¹ Only once the agency head denies qualification may the employee appeal to EDR for a qualification ruling.² There is no

¹ *Grievance Procedure Manual* § 4.2; see also Va. Code § 2.2-3004(D) ("Decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing.").

² Va. Code § 2.2-3004(D); *Grievance Procedure Manual* § 4.3.

indication that the agency head has made any determination as to whether this grievance qualifies for hearing. Because the agency head has yet to provide a response to the grievant's qualification request, the College prematurely forwarded the grievance package to EDR for a ruling.

This ruling also will address an issue raised by the unique organization of the VCCS, which this Department has not considered until this point. When a community college is involved in a grievance, the agency is VCCS. As such, the agency head would be the chief executive officer of VCCS, the Chancellor. Therefore, it is the Chancellor of VCCS that must make the initial decision at the qualification stage pursuant to Section 4.2 of the *Grievance Procedure Manual*.³ However, the Chancellor might decide that the Presidents of the individual community colleges are better suited to make such determinations. It would appear that if permitted by the State Board for Community Colleges,⁴ the Chancellor could delegate this authority to the individual community college Presidents, similar to the manner in which other agency heads have the ability to do within their agencies.⁵ If the Chancellor makes such a delegation, EDR must be notified in writing that the change has been made for all of VCCS.⁶

The College is directed to forward the grievance package to the Chancellor of VCCS. Within five workdays of receiving a copy of this ruling, the agency head, or the President of the College if so designated by the Chancellor, must provide a response to the grievant's qualification request.⁷ This Department's rulings on matters of compliance are final and nonappealable.⁸

Claudia T. Farr
Director

³ Va. Code § 2.2-3004(D).

⁴ See Va. Code § 23-224.

⁵ See Va. Code § 2.2-604.

⁶ It would appear that EDR and the community colleges, perhaps with the acquiescence of VCCS, have been already operating under the assumption that the Presidents make the qualification determination in grievances of employees of community colleges. Indeed, it is possible that the Chancellor has already delegated this authority. If that is the case, EDR asks that the Chancellor provide written notice of the delegation so that this Department can administer the grievance process efficiently and accurately.

⁷ If the agency head or his designee does not qualify the grievance for hearing, the grievant will still have the option of appealing the determination to EDR at that time. Va. Code § 2.2-3004(D); *Grievance Procedure Manual* § 4.3.

⁸ Va. Code § 2.2-1001(5).