

Issue: Access to the Grievance Procedure; Ruling Date: June 20, 2008;  
Ruling #2008-2032; Agency: College of William and Mary; Outcome: Access  
Denied.



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**ACCESS RULING OF DIRECTOR**

In the matter of the College of William and Mary  
Ruling No. 2008-2032  
June 20, 2008

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her May 7, 2008 grievance with her employing agency, the College of William and Mary (the College or agency).

FACTS

The grievant began employment with the College on or about April 10, 2007, as a housekeeper. On April 2, 2008, the College advised the grievant via a completed Probationary Progress Review form, as per Department of Human Resource Management (DHRM) Policy 1.45, that her probationary period was being extended from the usual one-year period to eighteen months. The College advised the grievant that the decision to extend her probation was based on “concerns regarding two sep[a]rate incidents.” The first of these incidents allegedly concerned unacceptable behavior, while the other allegedly involved “threatening language” towards the grievant’s supervisor.

On May 7, 2008, the grievant initiated a grievance challenging the extension of her probationary period. She asserts that her supervisor wrongfully extended her probationary period because she believed the grievant had “implicated her in wrongdoing regarding the misuse of state computer equipment and state time.” The grievant further asserts that the college failed to follow Policy 1.45 (or any other policy) “as it relates to probationary periods, progress reviews, and interim/6 month probationary review.”

The College concluded that the grievant lacked access to the grievance procedure due to her probationary status. The grievant has appealed the College’s access determination to this Department.

DISCUSSION

The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>1</sup> Thus, by statute, employees who have not completed their probationary period do not have access to the grievance

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

procedure.<sup>2</sup> DHRM Policy 1.45 provides that the probationary period for classified positions is generally twelve months effective from the date of employment, but that agencies may extend the twelve-month period for up to an additional six months for performance reasons, absences for an extended period of time, or if the employee moves to another position during the second six months of the initial twelve-month period.<sup>3</sup> Moreover, while Policy 1.45 encourages an employing agency to provide clear performance expectations and feedback on progress, such measures are not a prerequisite to the extension of probation.

Here, on April 2, 2008, just prior to the end of her initial twelve month probationary period, the College extended the grievant's probation for perceived performance reasons, for an additional six months until October 10, 2008, consistent with state policy. Thus, the grievant had not completed her extended probationary period at the time she initiated her May 7<sup>th</sup> grievance, and accordingly, did not have access to the grievance procedure for purposes of that complaint.

#### APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions that the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the determination that she does not have access to the grievance procedure to circuit court, she must notify her Human Resources Office, in writing, within five workdays of receipt of this ruling.

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Claudia T. Farr  
Director

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<sup>2</sup> *E.g.*, EDR Ruling No. 2007-1705; EDR Ruling No. 2005-1032.

<sup>3</sup> DHRM Policy 1.45, *Probationary Period*.