

Issue: Access to the Grievance Procedure; Ruling Date: October 20, 2008;  
Ruling #2009-2141; Agency: Virginia Community College System; Outcome:  
Access Denied.



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

**ACCESS RULING OF DIRECTOR**

In the matter of Virginia Community College System  
Ruling No. 2009-2141  
October 20, 2008

The grievant has appealed the Virginia Community College System's decision not to qualify his September 4, 2008 grievance for hearing. For the reasons set forth below, this Department finds that, because the grievant was not an employee of the agency at the time the grieved discipline was issued, the discipline was without effect and the grievant therefore lacks access to the grievance procedure.

FACTS

The grievant is a former employee of VCCS. On October 11, 2007, the grievant informed the agency that he would be entering a drug abuse treatment program. After receiving this information, the agency advised the grievant that he could not return to work. The grievant subsequently applied for and received short-term disability benefits. He later transitioned to long-term disability, at which time the agency terminated his employment.

The grievant grieved his removal, and on July 17, 2008, the hearing officer directed the agency to reinstate the grievant to his previous position.<sup>1</sup> As of August 27, 2008, the agency had not reinstated the grievant to that position due to its pending appeal of the hearing decision. On that date, however, the agency issued the grievant a Group III Written Notice "with termination." The grievant initiated a grievance challenging this disciplinary action on September 4, 2008. Although § 4.1(a) of the *Grievance Procedure Manual* provides that formal written discipline automatically qualifies for a hearing, the agency head denied the grievant's request that his September 4<sup>th</sup> grievance be qualified. The grievant has appealed the agency's determination to this Department.

DISCUSSION

To have access to the grievance procedure, a state employee must: (1) not be listed as exempt from the Virginia Personnel Act under § 2.2-2905 of the Code of Virginia; (2) have been non-probationary at the time the event that formed the basis of

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<sup>1</sup> Decision of the Hearing Officer, Case No. 8859, issued July 17, 2008 at 13.

the dispute occurred; (3) *and* have been employed at the time the grievance was initiated (unless the action grieved is a termination or involuntary separation, in which case the employee may initiate a grievance within 30 days of the termination or separation).<sup>2</sup> These access requirements may not be waived or modified by the parties.

The grievant was not employed by the agency or the Commonwealth at the time he received the Group III Written Notice or at the time his grievance was initiated. As a consequence, he would have access to the grievance procedure only if the Group III directly resulted in his termination or involuntary separation.<sup>3</sup>

This is not the case, however. Because the Group III Written Notice was issued after the grievant's termination by the agency, and before any reinstatement, it did not result in his termination or involuntary separation. Moreover, we have previously been advised by the Department of Human Resource Management (DHRM), the agency charged with developing and interpreting policies affecting state employees,<sup>4</sup> that DHRM Policy 1.60, "Standards of Conduct," does not apply to former employees, and therefore a Written Notice should not be issued to an individual no longer employed by the state.<sup>5</sup> As a result, it would appear that the Group III was null and void upon its issuance and had no effect on the grievant's status.<sup>6</sup> Accordingly, this Department concludes that the grievant did not have access to the grievance procedure when he initiated his September 4, 2008 grievance.

#### APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions 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 he does not have access to the grievance procedure to circuit court, he should notify the 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> *Grievance Procedure Manual* § 2.3 (emphasis added).

<sup>3</sup> *See, e.g.*, EDR Ruling Nos. 2005-961, 2005-962, 2005-963, 2005-964, 2005-965, EDR Ruling No. 2005-1026.

<sup>4</sup> *See* Va. Code § 2.2-3006 (A); *Grievance Procedure Manual* § 7.2 (a)(2).

<sup>5</sup> EDR Ruling No. 2007-1401.

<sup>6</sup> We note, however, that if the grievant is subsequently reinstated and terminated for the conduct charged in the August 27<sup>th</sup> Written Notice, he would have access to the grievance procedure to challenge that disciplinary action.