

Issue: Access to the Grievance Procedure; Ruling Date: November 27, 2012; Ruling No. 2012-3479; Agency: Department of Behavioral Health and Developmental Services; Outcome: No Access.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

ACCESS RULING

In the matter of the Department of Behavioral Health & Developmental Services
Ruling Number 2013-3479
November 27, 2012

The grievant has requested that EDR issue a ruling on whether she has access to the grievance procedure in order to challenge her separation from a facility of the Department of Behavioral Health & Developmental Services (the agency). For the reasons set forth below, EDR concludes that the grievant does not have access to the grievance process to initiate a grievance.

FACTS

The grievant began working with the agency on November 10, 2011 in a classified position. Following an investigation regarding whether the grievant engaged in patient neglect on or about August 30, 2012, the agency concluded that the grievant had engaged in inappropriate behavior on that day. On October 2, 2012, the grievant was issued a Termination Notice. The grievant's union representative wrote directly to EDR to challenge the termination after the grievant was told by the agency that she did not have access to file a grievance.

DISCUSSION

Department of Human Resource Management (DHRM) Policy 1.45 provides that employees "who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment."¹ The grievant had not completed her twelve-month probationary period when she was terminated on October 2, 2012. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge her termination.⁴

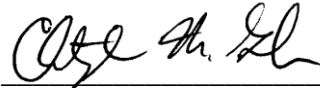
¹ DHRM Policy 1.45, *Probationary Period*.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ *E.g.*, EDR Ruling No. 2005-1032.

⁴ While the grievant does not have access to file a grievance, there may be other options available to her. For instance, "[a] probationary employee who claims that termination or other disciplinary action was based on race, sex, color, national origin, religion, sexual orientation, age, political affiliation, veteran status, or disability may file

EDR's access rulings are final and nonappealable.⁵



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Director
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a discrimination complaint with the Office of Equal Employment Services (OEES) in the Department of Human Resource Management or other agencies as appropriate.” DHRM Policy 1.45, *Probationary Period*. OEES can be contacted by calling 1-800-533-1414 or (804) 225-2136.

⁵ Va. Code § 2.2-1202.1(5).