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**ACCESS RULING**

In the matter of the Department of Social Services  
Ruling Number 2023-5471  
October 21, 2022

On September 26, 2022, the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) received a dismissal grievance initiated by the grievant to challenge his separation from employment. The grievant’s former employer was the Social Services Department for a County (the “County”). The grievant filed this grievance under the state employee grievance procedure and argues that he was employed under the state Department of Social Services (“the agency”). In response, the agency challenges whether the grievant has access to the state employee grievance procedure to initiate this grievance.

On or about September 9, 2022, the grievant received notice that his employment was terminated during his probationary period for insubordinate behavior toward his supervisor. On September 26, the grievant initiated a dismissal grievance with EDR, challenging his separation. The agency asserts that, because the grievant worked for a locality (the County), he does not have access to the state employee grievance procedure.

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.<sup>1</sup> Generally speaking, employees who are employed in positions designated as exempt from the Virginia Personnel Act (“VPA”) do not have access to the state employee grievance procedure.<sup>2</sup> Pursuant to Virginia Code § 2.2-2905, employees of localities (counties, cities, and towns) are exempt from the VPA and, accordingly, also do not have access to the state employee grievance procedure.<sup>3</sup>

EDR is the finder of fact on questions of access.<sup>4</sup> In this case, the grievant was employed by the County prior to his separation. Although he may be raising legitimate concerns about his separation, the grievant does not have access to the state employee grievance procedure to address

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

<sup>2</sup> Va. Code §§ 2.2-2905, 2.2-3002.

<sup>3</sup> Va. Code § 2.2-2905(12).

<sup>4</sup> See Va. Code § 2.2-1202.1(5); see also *Grievance Procedure Manual* § 2.3.

this matter through a grievance hearing.<sup>5</sup> As such, the dismissal grievance filed by the grievant with EDR is unable to proceed and the file will be closed.<sup>6</sup>

EDR's access rulings are final and nonappealable.<sup>7</sup>

*Christopher M. Grab*  
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<sup>5</sup> While we need not reach this issue, it appears that the grievant was also terminated during his probationary period. Only non-probationary employees have access to the state employee grievance procedure. Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3. As such, the grievance procedure would also not apply to the grievant because of his termination during probation.

<sup>6</sup> This ruling only determines that the grievant lacks access to the state employee grievance procedure. It does not address, and has no bearing on, whether other legal or equitable remedies may be available to the grievant in another forum.

<sup>7</sup> Va. Code § 2.2-1202.1(5).