



JANET L. LAWSON
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

ACCESS RULING

In the matter of the College of William and Mary
Ruling Number 2025-5744
August 8, 2024

On or about July 25, 2024, 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 her separation from employment at the College of William and Mary (the “college” or “agency”). In response, the college has challenged the grievance on grounds that the grievant lacks access to the state employee grievance procedure.

As described in the grievance, the issue is “[c]apricious elimination of [the grievant’s] position and lack of due process in termination of [her] employment.” The grievant alleges that she was hired in a “professional” position on February 1, 2023. On or about May 30, 2024, she received notice that “funding for [her] position would end on June 30.” She argues that her management offered inconsistent reasons for the elimination of her position and that her separation was not consistent with applicable college policies. Before filing a state employee Grievance Form A with EDR, the grievant had apparently filed a grievance using the college’s internal grievance procedure. However, she requests that DHRM serve as a “neutral arbitrator” for the dispute.

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.¹ Generally speaking, employees who are employed in positions designated as exempt from the Virginia Personnel Act (the “Personnel Act”) do not have access to the grievance procedure.² When the General Assembly adopted the Restructured Higher Education Financial and Administrative Operations Act in 2005, institutions of higher education, like the college, were given approval to designate “positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field” as administrative and professional faculty, and this provision was included within the Personnel Act.³ Accordingly, EDR has

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

² Va. Code §§ 2.2-2905, 2.2-3002.

³ *Id.* § 2.2-2901(E).

previously held that “Administrative/Professional Faculty” at institutions of higher education are exempt from the Personnel Act and do not have access to the state employee grievance procedure.⁴

In this case, it appears that the grievant was hired in a position classified as “professional” under the college’s Classification Policy. The Classification Policy defines “professionals” as “full and part-time administrative, technical, academic, clinical, research and professional faculty positions.”⁵ In addition, “professionals” under the Policy “are considered ‘faculty’ for purposes of the Management Agreement between the university and the Commonwealth,”⁶ which generally distinguishes between faculty and non-faculty positions.⁷

Thus, EDR finds that, for purposes of access to the grievance procedure, the grievant’s former position was appropriately considered “Administrative/Professional Faculty.” As such, she lacks access to the state employee grievance procedure. Although EDR facilitates a number of voluntary dispute resolution services, we are not aware of any authority to serve as an arbiter for the issues identified by the grievant in this matter. Accordingly, the dismissal grievance submitted by the grievant to EDR cannot proceed, and our file will be closed.⁸

EDR’s access rulings are final and nonappealable.⁹

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ See, e.g., EDR Ruling No. 2019-4840; EDR Ruling No. 2013-3477; see also DHRM Policy 2.20, *Types of Employment* (defining a “non-covered employee” as a “salaried employee who is not subject to the Virginia Personnel Act . . . [i]nclud[ing] . . . administrative and professional faculty).”

⁵ College of William and Mary Classification Policy § III.

⁶ *Id.*

⁷ For example, “all salaried nonfaculty College employees . . . shall have access . . . to the State Grievance Procedure”

⁸ This ruling determines only that the grievant is ineligible to pursue her claims through the state employee grievance procedure. Nothing herein should be read to address whether any legal or other remedy may be available to the grievant through another process for the issues raised in her grievance. For example, it appears that the grievant has already invoked the college’s Grievance Resolution Policy for Professionals and Professional Faculty. That policy indicates that grievances thereunder may proceed through three levels of review to an ultimate determination by the college provost or president.

⁹ Va. Code § 2.2-1202.1(5).