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***Department Of Human Resource Management***

***Office of Employment Dispute Resolution***

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## QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2025-5767
October 21, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether her May 22, 2024 grievance with the Department of Corrections (the "agency") qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

### FACTS

On or about May 22, 2024, the grievant initiated a grievance to address the conduct of the agency's HR Director in a meeting on May 9, 2024, which was attended by the grievant, her manager, and the HR Director. The purpose of the meeting appears to have been an attempt by the grievant's manager to address the grievant's recent communications. The grievant alleged that in this meeting, the HR Director was disrespectful, interrupted her, spoke over her, and created a "tense, hostile and intimidating atmosphere." The most notable interaction involves the grievant attempting to explain a grammar choice in an email exchange. The HR Director reportedly told the grievant that she needed to speak with an English major. When the grievant informed the HR Director that she had a degree in English, the HR Director reportedly stated that she needed to "talk to someone who knows because you clearly do not know." The grievant indicates that she filed the grievance seeking an apology from the HR Director and to bring awareness to her alleged conduct.

During the resolution steps, it appears that the step respondents met with the grievant and considered her accounts of the meeting. The input of the other meeting attendees was also sought and reviewed. The other attendees generally dispute the grievant's perceptions of the meeting, stating that the HR Director was not unprofessional during the meeting. The step respondents seem to have given weight especially to the grievant's manager's description of the meeting. As such, the grievant was not provided any relief during the resolution steps, though she did accomplish one of her objectives: bringing awareness of her perspective about the HR Director's alleged behavior. The agency head elected not to qualify the grievance for a hearing and the grievant now appeals that determination to EDR.

## DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.[1] The grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."[2] Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action that could be remedied by a hearing officer. An adverse employment action involves an act or omission by the employer that results in "harm" or "injury" to an "identifiable term or condition of employment."[3] Workplace harassment rises to this level if it includes conduct that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[4]

Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.[5] Thus, claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.[6] For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, the available facts must raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action in its totality was so unfair as to amount to a disregard of the applicable policy's intent.[7]

Although DHRM Policy 2.35 prohibits workplace harassment[8] and bullying,[9] alleged violations must meet certain requirements to qualify for a hearing. Harassment, bullying, or other prohibited conduct may qualify for a hearing as an adverse employment action if the grievant presents evidence that raises a sufficient question whether the conduct was (1) unwelcome; (2) sufficiently severe or pervasive that it alters the conditions of employment and creates an abusive

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[1] *See Grievance Procedure Manual* § 4.1.
[2] *See id.* § 4.1(b); *see* Va. Code § 2.2-3004(A).
[3] *See* Muldrow v. City of St. Louis, 144 S. Ct. 967, 974 (2024) (addressing a required element of a Title VII discrimination claim); *see, e.g.*, Burlington Indus. v. Ellerth, 524 U.S. 742, 761 (1998) (defining adverse employment actions under Title VII to include "tangible" acts "such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits").
[4] Strothers v. City of Laurel, 895 F.3d 317, 331 (4th Cir. 2018) (citing Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986)).
[5] Va. Code § 2.2-3004(B).
[6] *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).
[7] *See, e.g.*, EDR Ruling No. 2020-4956.
[8] Traditionally, workplace harassment claims were linked to a victim's protected status or protected activity. However, DHRM Policy 2.35 also recognizes non-discriminatory workplace harassment, defined as "[a]ny targeted or directed unwelcome verbal, written, social, or physical conduct that either denigrates or shows hostility or aversion towards a person not predicated on the person's protected class."
[9] DHRM Policy 2.35 defines bullying as "[d]isrespectful, intimidating, aggressive and unwanted behavior toward a person that is intended to force the person to do what one wants, or to denigrate or marginalize the targeted person." The policy specifies that bullying behavior "typically is severe or pervasive and persistent, creating a hostile work environment."

or hostile work environment;[10] and (3) imputable on some factual basis to the agency.[11] As to the second element, the grievant must show that they perceived, and that an objective reasonable person would perceive, the environment to be abusive or hostile.[12]

DHRM Policy 2.35 and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome. While these terms must be read together with agencies' broader authority to manage the means, methods, and personnel by which agency work is performed, management's discretion is not without limit. Policy 2.35 also places affirmative obligations on agency management to respond to credible complaints of prohibited conduct and take steps to ensure that such conduct does not continue. Specifically, "[a]gency managers and supervisors are required to: [s]top any prohibited conduct of which they are aware, whether or not a complaint has been made; [e]xpress strong disapproval of all forms of prohibited conduct; [i]ntervene when they observe any acts that may be considered prohibited conduct; [t]ake immediate action to prevent retaliation towards the reporting party or any participant in an investigation; [and t]ake immediate action to eliminate any hostile work environment when there has been a complaint of workplace harassment . . . ."[13] When an agency fails to meet these obligations, such failure may constitute a misapplication or unfair application of Policy 2.35 such that the harassing or bullying behavior is imputable to the agency.

The grievant argues that the HR Director was disrespectful during the May 9 meeting. After a thorough review of the facts, including the descriptions of the meeting by the attendees and all evidence submitted by the grievant, EDR cannot find that an objective reasonable person would perceive the described interaction to have risen to the level of a violation of policy such that a hearing is warranted. While the HR Director could have perhaps chosen different words during the discussion of grammar, the overall conduct of the meeting appears to have been professional and consistent with an attempt by the grievant's manager to address issues he had with the greivant's communications. We cannot conclude at this time that the grievant's allegations, without more, are so severe or pervasive as to exceed management's discretion and rise to the level of a hostile work environment or other harm or injury to an identifiable term or condition of her employment. For the foregoing reasons, EDR concludes that this grievance does not raise a sufficient question

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[10] The grievant must show that he or she perceived, and an objective reasonable person would perceive, the environment to be abusive or hostile. Freeman v. Dal-Tile Corp., 750 F.3d 413, 421 (4th Cir. 2014) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 21-23 (1993)). "[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23; *see*, *e.g.*, Parker v. Reema Consulting Servs., 915 F.3d 297, 304-05 (4th Cir. 2019) (finding that a false rumor that an employee was promoted for sleeping with a manager altered the conditions of her employment because the employee was blamed for the rumor and told she could not advance in the company because of it); *Strothers*, 895 F.3d at 331-32 (holding that a hostile work environment could exist where a supervisor overruled the employee's bargained-for work hours, humiliated the employee for purportedly violating the dress code, required her to report every use of the restroom, and negatively evaluated her based on perceived slights).

[11] *See* Gilliam v. S.C. Dep't of Juvenile Justice, 474 F.3d 134, 142 (4th Cir. 2007).

[12] *Freeman*, 750 F.3d at 421; *see* DHRM Policy Guide – Civility in the Workplace ("A 'reasonable person' standard is applied when assessing if behaviors should be considered offensive or inappropriate.").

[13] DHRM Policy 2.35, *Civility in the Workplace*.

as to whether the grievant has experienced an adverse employment action and, thus, it does not qualify for a hearing.

This ruling determines only that the grievance does not meet the statutory requirements to qualify for an administrative hearing. That said, nothing in this ruling should be read to foreclose the grievant's ability to file a subsequent grievance addressing new developments related to any of these issues in the future.

EDR's qualification rulings are final and nonappealable.[14]

*Christopher M. Grab*
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[14] *See* Va. Code § 2.2-1202.1(5).