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QUALIFICATION RULING

In the matter of the University of Virginia
Ruling Number 2025-5777
October 31, 2024

This ruling addresses the partial qualification of a grievance initiated with the University of Virginia (the “university” or “agency”) on or about September 3, 2024. The grievant has appealed the agency head’s partial qualification to the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM).

On or about August 21, 2024,¹ the agency issued to the grievant a Group I Written Notice. On or about September 3, 2024, the grievant initiated a grievance that purports to challenge the Group I Written Notice. In the listing of issues of the grievance, the grievant has included a number of claims related to prior performance evaluations and development plans from 2021 to 2023. Although the step respondents appear to have minimally addressed the grievant’s challenge to the Group I Written Notice in the brief responses, there is no mention of the allegedly related matters of the past performance evaluations and development plans. At the qualification stage, the agency head designee notes that only the Group I Written Notice is qualified for a hearing without any further discussion of the other matters. The grievant has appealed the partial qualification to EDR.

Although the grievant appears to argue that prior issues with her performance evaluations and development plans gave rise to the Group I Written Notice, these management actions were from 2021 to 2023. If the grievant had wanted to grieve the prior performance evaluations and development plans, then such grievances should have been filed within 30 calendar days of her receipt of those actions.² The alleged causal connection does not render these past actions subject to a new grievance or create a basis to meet the threshold standard to qualify for hearing as independent issues. Thus, a hearing officer would not have authority to direct any relief with regard to the prior performance evaluations and development plans. However, as EDR has consistently held, the “claims” or “issues” raised by a grievance are the management actions being challenged. EDR has generally recognized that when a management action is qualified for hearing, as the

¹ While it appears the grievant did not receive the Written Notice until August 26, the issued date indicates August 21.

² *Grievance Procedure Manual* §§ 2.2, 2.4. While it does not appear that any of the step respondents addressed the potential noncompliance with the timeliness requirements of the grievance procedure in the grievant’s inclusion of these issues as potential independent claims in her grievance, EDR would note that the grievance paperwork itself is unclear with respect to the grievant’s inclusion of these matters in certain regards. Therefore, we are not deeming the university to have waived such a compliance issue at this stage.

Group I Written Notice is in this case, then the grievant can present evidence at hearing as to any theories as to why the Written Notice is improper.³ Thus, to the extent that the issues with these past management actions is determined to be relevant to the grievant's challenge to the Group I Written Notice itself, then the hearing officer would have authority to accept record evidence of such matters, for instance as background information.

Because the grievant's challenge to the Group I Written Notice is qualified for hearing, the grievant will have the opportunity at the hearing to prove affirmative defenses against the Written Notice, including the effect, if any, of the prior performance evaluations and development plans.⁴ Therefore, while we agree with the agency that any challenge to the prior performance evaluations and development plans are not qualified for hearing as issues independent of the Written Notice, nothing in this ruling should be interpreted to limit the grievant's ability to present evidence in support of any affirmative defense to the Written Notice. We note that such evidence may include documents and/or testimony relating to the prior performance evaluations and development plans she has received, if relevant.

In sum, we affirm the agency head's determination that the grievance is only partially qualified for hearing. However, this determination constrains only the independent issues to be decided by the hearing officer, not the evidence that may be offered in support of the parties' respective burdens of proof.

If it has not already done so, the agency is directed to submit a completed Form B to EDR **within five workdays** of this ruling. A hearing officer will be appointed in a forthcoming letter.

EDR's qualification rulings are final and nonappealable.⁵

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³ See, e.g., EDR Ruling No. 2022-5348 (and authorities cited therein).

⁴ *Rules for Conducting Grievance Hearings* § VI(B)(1).

⁵ See Va. Code § 2.2-1202.1(5).