

COMMONWEALTH OF VIRGINIA
Department of Human Resources Management
Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re: EDR Case Number 12434

Hearing Date: April 9, 2026
 Decision May 11, 2026

DECISION OF HEARING OFFICER

PROCEDURAL HISTORY

Grievant's job title is Agency Senior Conduct Coordinator. On January 12, 2026, Grievant's Agency direct supervisor, who testified, wrote to Agency HR director supervisor, who testified, that by monitoring and review process, the Grievant [demonstrated] failure to show sustained improvement or demonstrate non compliant behavior [which] will result in additional corrective action, up to termination, and [Supervisor] requested to advise on the next steps (A.Ex.N, Testimony).The Agency then, by letter of January 28, 2026, informed Grievant of formal written notice with disciplinary action up to and including termination of employment, stating the Group offenses, placing Grievant on paid administrative leave, and requesting a written response to the letter. (A.Ex. J).Grievant provided a written response to the letter on January 29, 2026. (A.Ex. K)). The Agency then issued four Written Notices to Grievant : to wit: (1) A Group III Written Notice on 02/03/2026,of offenses 11,13, 99 of 01/12/2026 for referring a student complaint of sexual violence to the wrong office, causing neglect of duty, a delay and safety risk No disciplinary action is stated. (Agency ("A" Exhibit "Ex" P).(2) A Group III Written Notice on 02/03/2026,of offenses 11,13, 99 on 01/21/2026 for referring a student complaint of inappropriate sexual behavior to the wrong office, causing neglect of duty, a delay and safety risk). No disciplinary action is stated.(Agency ("A") Exhibit "Ex" Q). (3) A Group II Written Notice on 02/03/2026,of offenses 13,56 on 01/29/2026 for failing to enter absence on November 18, 2025 in the Cardinal timekeeping system despite being told to do so verbally and by text by [Agency complainant], compliance failure with the Performance Improvement Plan ("PIP"), constituting failure to follow instruction and insubordination, delay and safety risk, (A. Ex.I), and (4). A Group II Written Notice on 02/03/2026,of offenses 11,13 on 12/12/2025 for failure to provide Maxient system training to a new hire in [Grievant's department] in accordance with the terms and conditions of their PIP [which] constitutes failure to follow instructions and unsatisfactory performance No disciplinary action is stated (A.Ex. G, Grievant Exhibit A).

Grievant was terminated by letter signed 02/03/2026 by the Agency Chief of Staff, stating that Grievant failed to demonstrate satisfactory improvement [and] continued to exhibit serious performance deficiencies stated therein, of issues which required immediate resolution (A.Ex. F).

Grievant timely filed a grievance to challenge the Agency's disciplinary action by submitting the Grievance Form A on February 6, 2026 from the termination date of February 3, 2026.Grievant's Form A states in sum the issues of wrongful termination and retaliation [and] a hostile and toxic work environment...and requested "... Financial compensation and Benefits, Severance Pay:payments

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equivalent to one (1) full year gross salary, Health insurance Continuity cover the full cost of health dental, and vision insurance premiums for 1 year.

EDR appointed the undersigned as the Hearing Officer ("HO") effective March 2, 2026. A telephone Prehearing conference was held on March 10, 2026 with participation by the Grievant, the Agency representative, and the Hearing Office. At that conference; the hearing format was set as virtual, by request of both parties and Hearing Officer agreement. Exchange of exhibit lists, exhibits, and witness lists, with the option of electronic exchange, was set for five calendar days prior to hearing, by agreement of the parties and the HO. The parties reached agreement on document and witness production .

The hearing was held April 9, 2026, a date agreeable to the parties.

APPEARANCES/ABSENCES

Grievant
Agency Representative
Witnesses

ISSUES

1. Whether Grievant engaged in the behavior described in the Group II and III written Notices?
2. Whether the behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law (e.g. free of unlawful discrimination) and policy (e.g. properly characterized as a Group I, II, or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and of so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows what is sought to be proved is more probable than not. (GPM§ 9).

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness,, the Hearing Officer makes the following findings of fact:

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1..All proposed exhibits , including a notebook of exhibitis submitted by the Agency, and documents submitted by the Grievant, were admitted in their entirety without objection.

2. Grievant had been employed at the Agency Facility with a work title of Senior Coordinator for Student Services(A.Ex.C).

3. Grievant does not have prior disciplinary offenses in evidence herein.

4. Both parties provided opening and closing arguments.

5. Grievant has received training and information om Agency topics over the years, including training in Time and Attendance Reporting certicate of 01/29/2026 (A.Ex.M) and Title IX information acknowledgment on April 12, 2021(A.Ex.O) .

A. Grievant had successfully used the Cardinal timekeeping system on other occasions ((A.Ex. C, L).

6. Grievant had knowledge of and was an assigned trainer of the Agency Maxient system (A.Ex.C) .

7. The Agency ,by Grievant's Supervisor, signed the Notice of Improvement Needed/Substandard seven page document (PIP) on 10/5/25. A reviewer signed on 12/04/25, stating "shared on 11/24/25...PIP goes into effect 12/1/25 to 3/1/26...[Grievant] signature refused per email attached..." (A.Ex.C).

8. Grievant confirmed by email and testified that he refused to sign th PIP .The Agency supervisor, who testified credibly, replied to Grievant by email that the PIP would still be in effect without Grievant's signature (A.Ex.C, D, Testimony).

9.The PIP, effective December 1.2025, addressed incidents and ongoing concerns beginning 09/23/25 (unprofessional noise), non response to supervisory emails of concerns, excessive lateness, prompts for Cardinal, timely required reports submission and follow up, Maxient training for new employee not implemented with numerous prompts, no show or late to required meetings with supervisors, inaccurate data on reporting forms. Complaints submitted and routed to the wrong office (including time sensitive violence and Title IX complaints), providing inaccurate procedural guidance, and accurate, organized record keeping (A.Ex.C).

10. Agency Witness I, Employee Relations Manager ("HR"), had direct interactions with Grievant. S/he was called by Grievant to testify. The testimony presented as credible. Witness is not involved in work duties, but reviews concerns of policy violation by staff. Witness testified to several direct interactions with Grievant over concerns regarding performance, communication, behavior, and policy concerns over adjudication of issues.

A. Witness I testified regarding the unreported 11/18/25 absence issue: that it became a Group II discipline because Grievant did not, to the present time, follow Agency documented directives to properly report using the Cardinal system; that the absence report could be

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retroactively filed or disputed; that this [non reporting] behavior is constituting failure to follow directions, insubordination, and is reasonably considered fraud because Grievant was wrongly paid for the day.

B. Witness I testified regarding the Title IX misfiled -misrouting complaints, one of which alleged sexual violence, that Grievant had been trained with certification, and recently informed of proper filing procedures, following a 10/14/25 misfiling by Grievant of a domestic violence complaint by misrouting to the wrong office rather than the proper filing location.

Witness credible testimony and documentation was that the Title IX misfiling-misroutings on January 23 and 25, 2026, violating federal rules, caused a delay in complaint processing which violates federal law, a delay which placed the complainants in danger, and a delay in providing a proper response to the complaints.(A. Ex. B, J, M,O, Testimony).

11. Agency Witness II ("W.II") an Agency Administrator and Grievant's Direct Supervisor, testified credibly about their knowledge and interactions with Grievant. W.II testified they provided oversight, supervision, in person meetings, and communication to Grievant, including addressing Grievant implementation of the PIP provisions and fulfilling Witness directives to properly fulfill his job responsibilities. W.II testified to directing Grievant to train the new employee, to properly report the 11.18.25 absence retroactively, and regarding the Title IX filings referred Grievant to an explanatory Agency document of 08.25.2026 (A. Ex. B).

W.II stated s/he had to personally correct the Grievant's incorrect Title IX filing; and noted that the Written Notice of January 12, 2026 regarding Title IX misfiling did not correct Grievant's misconduct; since a Grievant incident of misfiling a Title IX complaint occurred again on January 21, 2026.

W.II affirmed the email correspondence where Grievant declined to sign the PIP and was informed it was nonetheless in effect. Regarding feeling unsafe, W.II informed Grievant to report to the police that s/he did not feel safe in the current work environment (A.Ex. D, Testimony).

12. Agency Witness III ("new employee")'s job title is Assistant Director of [consumer] Care. W.III testified credibly to beginning job duties September 25, 2025 while lacking the needed skills to access the necessary Maxient system in that job, and needed immediate Maxient and due process procedure training to perform job duties. W.III described the system as including collecting needed data on Agency consumers, other Agency data, Agency contact information, and complaint information. It was W.III's understanding Grievant would provide training. When training did not occur, Witness stated that of necessity, they sought assistance from other Agency people who had limited knowledge, and developed alternate system access, and continues to need training. Witness III affirmed that when they did meet with Grievant on December 8, 2026 and January 16, 2026, Grievant provided no training and only spoke of general Agency matters.

A. Agency Exhibit H, pages 1-2, dated January 30, 2026, between Agency Witness I and an Agency Executive Director states that new employee confirmed no training components by Grievant had taken place.

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13. Agency Witness IV, job title Employee Experience Manager, Office of Human Resources "HR"), testified credibly that Grievant did not enter their absence of November 18, 2025 to date in the required Cardinal system; that entry can occur ninety days after absence or later by request to HR, that absence identification issues can be disputed to HR, and that Grievant both prior to and subsequent to that date had correctly entered absences on Cardinal. W.IV testified that employees are paid for a work day if a Cardinal absence is not entered, and Witness IV considers such wrongful payment as fraud.

14. Grievant had received training in Title IX Information (A.Ex.O certificate, Testimony), and Employee Training on Time and Attendance Reporting (A. Ex. M certificate, Testimony).

15. Grievant presented witnesses and written letters of character.

A. Grievant Witness "A", was a prior Agency Administrator and Grievant's supervisor, who retired in 2024. W. "A" testified credibly that during the time s/he supervised Grievant, until 2024, Grievant exhibited good character, received an award as professional of the year, had positive rapport with consumers, competence, reliability, and followed required procedures including Title IX procedures.

(1). The HO finds this testimony, while positive of Grievant's character and past job production, is not relevant to the issues at bar which occurred subsequent to their interaction and after the Witness's Agency affiliation.

B. Grievant Witness "B" Agency Administrative Assistant t Agency, testified that to their knowledge, absence could not be entered retroactively on Cardinal after the time expired. G. W."B" testified that in their opinion, supervisors did not try to fix Grievant's problems and assigned tasks beyond which Grievant could perform. On cross examination, G.W."B" stated s/he did not know of the ninety day Cardinal reporting procedure and did not have knowledge or observation of interactions between Grievant, HR, and supervisors.

(1). The HO gives this testimony limited weight since the witness had limited first hand knowledge of the issues at bar.

16. The Hearing Officer accepts as valid the letters of good character which state positive Grievant experiences by Agency consumers with whom Grievant interacted. (G.Ex. H).

17. Grievant testified with appropriate demeanor. In sum, Grievant testified to being a team player, to not receiving sufficient communication regarding disciplinary issues nor sufficient support; that the November 16, 2025 absence report issue was a one time error and he might have performed some work that day; did not sign the PIP because of disagreement with its contents; was not informed of PIP non compliance issues until January 2026; and the Title IX issues involved complaints which did not necessarily constitute issues that required filing with the Title IX office. Grievant affirmed their written statement that s\he does not feel safe in the work environment (A.Ex. E).

A. Grievant provided defenses by January 29, 2026 rebuttal letter (A.Ex. K). In sum, Greivant claimed the Agency did not provide communication or feedback on issues; that

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Grievant did provide successful training tasks on December 17, 2025; that Agency notice and an opportunity to respond to complaints of incorrect [Title IX] referrals and safety concerns was untimely; that the Cardinal timekeeping issue is irrelevant to core job performance, disproportionate, and they consistently otherwise used the system correctly; and that Grievant incurred a Hostile Work Environment from a lack of communication, withholding information, and exclusionary leadership practices and staff interactions; suggesting a retaliatory motive (A.Ex.K).

B. Grievant submitted printouts of communication logs among Grievant, Direct Supervisor, HR, and other individuals, including individuals who present as involved with Grievant in Agency procedures ("conduct conferences"). One email thread is a cancelled January 26, 2026 meeting with Direct Supervisor of "monthly 1:1 meeting". Grievant states email concerns in January 2026 of perception of exclusion from work topic conversations among coworkers and Supervisors. (G. Exs D, E, G).

17. Regarding the absence issue, The HO finds that the Grievant's continuing failure to properly file this absence after directives, training certification on time and attendance reporting, and exhibiting correct prior and subsequent use of the reporting system, does constitute a Group II offense (A. Ex. C, J, M). The HO notes that this offense rises to a Group II offense because of the Grievant insubordination of refusing to follow supervisory directives and failure to defensively dispute the charge. This misconduct did occur, as supported by a preponderance of documentation and testimony evidence, and constituted misconduct consistent with law and policies.

18. Regarding misfiling issues, the HO finds that the Grievant's continuing failure to accurately and timely file/route serious complaints, including Title IX complaints under federal law, which require compliance with federal procedures, and where the filing delay can reasonably endanger the complainant; after Grievant's Title IX documented training, and Agency recent supervisory directives, does constitute a Group III offense. The HO notes Grievant was trained and warned to use the correct procedures. This behavior did occur, as supported by a preponderance of documentation and testimony evidence, and constituted misconduct consistent with law and policies.

19 Regarding the training issue to new employee, the HO finds the Group II discipline appropriate, when Grievant failed to provide the training after supervisory directives, a PIP, directive, and possessing the demonstrated ability to provide the training. This failure significantly negatively affected Agency operations and procedures. This behavior did occur, as supported by a preponderance of documentation and testimony evidence, and constituted misconduct consistent with law and policies.

18. As mitigation and defenses, Grievant proffered positive character references and a position that s/he was treated unfairly, with retaliation, felt unsafe in the work environment, performed job responsibilities, and endured a hostile environment. Grievant did not provide substantiation for the claims of negative disparate treatment or explain why they felt unsafe,

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nor what if any steps they took for this feeling. The HO finds Grievant's rationales for behavioral misconduct unpersuasive and lacking substantiation. While certain Agency people gave Grievant positive character references, those opinions do not mitigate or address the negative job performance issues at bar. The Agency presented sufficient non-retaliatory business reasons for the disciplinary action. Further, although not required to do so, the Agency provided prior mitigation of supervision and assistance, a PIP, and opportunities to remediate the job production deficiencies; however Grievant did not improve job performance or correct deficiencies, as documented by credible evidence and testimony.

The Hearing Officer finds that, by a preponderance of the evidence, under the facts in this case and the applicable regulatory standards, that the Grievant engaged in the behavior described in the written notices, that the behaviors at issue constituted misconduct, and that the Agency's discipline was consistent with law and policy. The Hearing Officer finds no mitigating circumstances, no retaliation, and no disparate treatment to justify a reduction or removal of the disciplinary action. The HO notes that the Agency did previously apply mitigation, and that Grievant engaged in repeated offenses of insubordination which significantly negatively impacted Agency operations and services. Thus, the Agency had proper cause to terminate the Grievant under the applicable criteria without benefits.

CONCLUSIONS OF POLICY

1. DHRM: Employee Offenses :Unacceptable behavior is divided into three types of offenses , according to their severity, as per the Virginia Department of Human Resource Management ("DHRM") Attachment A: Policy 1.60.:

Group I offenses "...include acts of minor misconduct that require formal disciplinary action...For repeated Violations of the same offense, an agency may issue a Group II Notice if the employee has an active Group I Written Notice for the same offense in his/her personnel file..."

Group II offenses " include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action...Second Offense: discharge or in lieu of discharge the Agency may Suspend...demote...or transfer...Absent mitigating circumstances, discharge may occur for accumulations as follows...Two Group II level offenses..Examples may include failure to follow supervisor's instruction; comply with written policy or agency procedures...failure to report for work without proper notice..."

Group III offenses " include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination...includes violations of policy or unsatisfactory performance that is of a most critical nature and significantly impacts agency services and operations...serious violations of policy, procedures, or laws...safety /health infractions that endangers the employee or others..."

2. DHRM Policy 1.60 Employee Standards of Conduct "...Perform assigned duties and responsibilities with the highest degree of public trust. Devote full effort to job responsibilities during

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work hours Use state equipment, time, and resources judiciously and as authorized. Support efforts that ensure a safe and healthy work environment...Demonstrate respect for the agency and towards the agency coworkers, supervisors, managers, subordinates...". (A.Ex. A).

3. Facility Policies

A. The Agency document "Written Notice Offense Codes" states the offence title and number. In this case, Grievant's termination offenses were stated as ;

(1) Group II: 13 for two separate offenses; (. Offense 13 is "Failure to follow instructions or policy". Offense 56 is "Insubordination ").

(2). Group III: 11,13, 99. (Offense 11 is "Unsatisfactory performance: Offense "Other-99 is "Other-third instance in three months of misrouting student complaints, including of inappropriate sexual behavior, and failure to adhere to the expectations of the performance improvement plan of December 1, 2025.(A. Ex. A).

4. Federal Law: Title IX- Sexual Harassment Policy 20 U.S.C. §168 requires the Agency, as an applicable entity, to comply with its procedures or face federal intervention and possible penalties. Filing with the Title IX coordinator is required for Title IX complaints of sexual harassment.. (A. Ex. B).

MITIGATION

Hearing Officers are authorized, under Virginia Code§ 2.2-3005(C)(6), to make findings of fact as to the material issues of the Case *de novo*, and determine whether the cited actions constitute misconduct; and whether there are mitigating circumstances to justify reduction or removal of the disciplinary action, or aggravating circumstances to justify the disciplinary action. In this case, the HO finds the Grievant has not met their burden to prove mitigation is warranted, and the HO finds no reason to mitigate this matter, and finds the aggravating circumstances stated herein justify the disciplinary action of Termination.

DECISION

For the reasons stated above, the Agency's issuance to the Grievant of Group II and Group III offenses resulting in the disciplinary action of Termination is upheld.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar days** from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

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Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
600 East Main Street, 17th Floor
Richmond, VA 23219

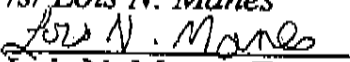
or send by email to EDR@dhrm.virginia.gov or by fax to (804)371-7401

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15 day calendar day period has expired or when requests for administrative review have been decided.

A challenge that the hearing officer decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing officer decision is not in compliance. A challenge that the hearing officer decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final. Agencies must request and receive prior approval from EDR before filing a notice of appeal.

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation or call EDR's toll free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

/s/ Lois N. Manes

Lois N. Manes, Esq.
Hearing Officer

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