

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: January 3, 2017; Ruling No. 2017-4471; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2017-4471
January 3, 2017

The Department of Behavioral Health and Developmental Services (the agency) seeks a ruling concerning the matter of three grievances initiated by the grievant.

FACTS

On or about December 22, 2016, the grievant initiated a grievance directly with the Office of Employment Dispute Resolution (EDR) to challenge her December 9, 2016 separation from employment. Upon EDR's notification to the agency of its receipt of this grievance, the agency advised that two other grievances initiated by the grievant on November 28, 2016 and December 13, 2016, were proceeding through the management steps, and a second-step resolution meeting was scheduled for January 4, 2017. The agency requested consolidation of these grievances.

DISCUSSION

The *Grievance Procedure Manual* states that a grievance may not "challeng[e] the same management action or omission challenged by another grievance."¹ In this case, the grievant has initiated three separate grievances: 1) a November 28, 2016 grievance challenging a due process notice issued on or about November 18, 2016 and advising that the agency was considering formal disciplinary action based upon an allegation of Inappropriate or Non-Therapeutic Behavior with a resident; 2) a December 13, 2016 grievance challenging a Group II Written Notice issued on or about December 9, 2016, alleging Inappropriate or Non-Therapeutic Behavior; and 3) a December 22, 2016 dismissal grievance challenging a Group III Written Notice with termination, which the grievant indicates she received on December 22, 2016. EDR has reviewed the three grievances initiated by this grievant and concludes that essentially one common management action exists that is being challenged in each grievance: disciplinary action received by the grievant for allegedly Inappropriate or Non-Therapeutic Behavior with a resident.

The November 28, 2016 grievance challenges a due process letter received regarding the incident that ultimately led to the issuance of formal disciplinary action and the grievant's termination from employment. It appears that the agency is properly addressing this matter

¹ *Grievance Procedure Manual* § 2.4.

through the management resolution steps. Ultimately, however a due process letter is not equivalent to a Written Notice of formal discipline as it, in itself, does not have a significant detrimental effect on the terms, conditions, or benefits of employment.² Thus, such a grievance is ultimately unlikely to qualify for a grievance hearing.³ In this instance, EDR deems it more practical and efficient that only the grievance challenging the Written Notice for the underlying action proceed.

It also appears that the December 9, 2016 grievance challenges the same action as the December 22, 2016 dismissal grievance (the grievant's termination), though it was initiated regarding a Written Notice which has now been rescinded and re-issued. While EDR makes no finding of noncompliance in this instance, there still exists a basis to close the December 9 grievance as it now duplicates the December 22 grievance, which challenges the re-issued Written Notice.

Accordingly, the grievant's November 28, 2016 and December 13, 2016 grievances will be considered closed. The December 22, 2016 grievance paperwork will proceed forward as the grievant's "dismissal grievance" challenging the Group III Written Notice and termination. This ruling does not foreclose the grievant's ability to raise any arguments regarding her dismissal that were set forth in the grievances of November 28 and December 13. Indeed, the grievant is expressly permitted to raise any issue included in her November 28 and December 13 grievances in her dismissal grievance.

EDR's rulings on matters of compliance are final and nonappealable.⁴



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² See *Boone v. Goldin*, 178 F.3d 253 (4th Cir. 1999).

³ See EDR Ruling Nos. 2014-3723, 2014-3724.

⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).