

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: March 8, 2017;
Ruling No. 2017-4515; Agency: Norfolk State University; Outcome: Grievant Not in
Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

COMPLIANCE RULING

In the matter of Norfolk State University
Ruling Number 2017-4515
March 8, 2017

Norfolk State University (the “University”) seeks a compliance ruling concerning the matter of the grievant’s filing of an expedited grievance.

FACTS

On or about February 13, 2017, the grievant initiated a grievance directly with the Office of Employment Dispute Resolution (EDR), utilizing the Grievance Form A – Expedited Process to challenge his separation from employment.² The February 13, 2017 dismissal grievance has been assigned to a hearing officer and a hearing has been scheduled. On or about March 6, 2017, the grievant initiated a second grievance with EDR, utilizing a Grievance Form A – Expedited Process. The University asserts that the March 6 grievance is duplicative of the February 13 grievance and, thus, out of compliance with the grievance procedure. As such, the University seeks a compliance ruling to administratively close the grievance.

DISCUSSION

If a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance will be administratively closed.³ Here, because dismissal grievances are initiated directly with EDR,⁴ an agency may be essentially unable to follow this process as outlined. The University requests a ruling from this Office regarding this issue.

The *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.”⁵ In this instance, it appears

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

² Dismissal grievances filed directly with EDR that utilize a Grievance Form A or Grievance Form A – Expedited Process rather than a Dismissal Grievance Form A are nevertheless generally treated as properly filed dismissal grievances when they clearly challenge a termination that constitutes a “dismissal.”

³ *Grievance Procedure Manual* § 2.4.

⁴ *Grievance Procedure Manual* § 2.5.

⁵ *Grievance Procedure Manual* § 2.4.

that the March 6, 2017 grievance challenges the same action as the February 13, 2017 grievance (the grievant's termination). While EDR makes no finding of noncompliance for the grievant's use of an incorrect form, there still exists a basis to close the March 6 grievance as it duplicates the February 13 grievance.

Accordingly, the grievant's March 6, 2017 grievance will be considered closed. The February 13, 2017 grievance paperwork will proceed forward as the grievant's "dismissal grievance" challenging his termination. This ruling does not foreclose the grievant's ability to raise any arguments regarding his dismissal that were set forth in the grievance of March 6. Any such arguments, for example those regarding the "revised" letter of termination, may be raised as a part of the dismissal grievance. EDR's rulings on matters of compliance are final and nonappealable.⁶



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⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).