

Issue: Compliance – Grievance Procedure (documents); Ruling Date: April 24, 2018;  
Ruling No. 2018-4709; Agency: Department of Behavioral Health and Developmental  
Services; Outcome: Grievant Not in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**COMPLIANCE RULING**

In the matter of the Department of Behavioral Health & Developmental Services  
Ruling Number 2018-4709  
April 24, 2018

The Department of Behavioral Health & Developmental Services (the “agency”) has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) related to the grievant’s October 10, 2017 grievance. The agency alleges that the grievant has failed to comply with the grievance procedure in relation to the production of requested documents.

FACTS

On October 10, 2017, the grievant initiated a grievance with the agency. On February 6, 2018, the agency requested a compliance ruling regarding this grievance, and on February 9, 2018, the grievant provided EEDR with approximately 400 pages of additional information regarding the grievance. On March 22, 2018, EEDR issued Ruling Number 2018-4679, which noted that the information “appears to relate to the subject matter of the grievance itself, rather than the grievant’s failure to advance her grievance.” On March 26, 2018, the agency requested that the grievant provide a copy of this information to the agency. The grievant has not provided the information to the agency, stating that she will do so “at the appropriate time” and that the documents are “not up for discussion at this time” as she believes that she “prematurely delivered” them to EEDR. The agency has asked EEDR for a compliance ruling regarding the grievant’s failure to produce these documents.

DISCUSSION

The grievance statutes provide that “[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved, shall be made available upon request from a party to the grievance, by the opposing party.”<sup>1</sup> EEDR’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. Just cause is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”<sup>2</sup> For purposes of document production, examples of just cause include, but are not limited to, (1) the documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the

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<sup>1</sup> Va. Code § 2.2-3003(E); *see Grievance Procedure Manual* § 8.2.

<sup>2</sup> *Grievance Procedure Manual* § 9.

documents are protected by a legal privilege.<sup>3</sup> The statute further states that “[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance.”<sup>4</sup>

EEDR has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner. All such documents must be provided within five workdays of receipt of the request. If it is not possible to provide the requested documents within the five workday period, the party must, within five workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than ten workdays from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or “just cause,” the withholding party must provide the requesting party with a written explanation of each claim, no later than ten workdays from receipt of the document request.<sup>5</sup>

In this instance, the grievant has not asserted just cause for withholding the requested documents from the agency. EEDR has reviewed the documents at issue and concludes that the information appears to be relevant to the subject matter of this grievance; indeed, the agency is likely already in possession of much of this documentation. As such, the grievant is directed to produce copies of these documents to the agency.

### CONCLUSION

Based on the discussion above, **within five days of the date of this ruling**, the grievant is directed to produce to the agency the documents it has requested.<sup>6</sup>

EEDR’s rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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Director  
Office of Equal Employment and Dispute Resolution

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<sup>3</sup> See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

<sup>4</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

<sup>5</sup> *Grievance Procedure Manual* § 8.2.

<sup>6</sup> In the alternative, with the permission of the grievant and so that production may be expedited at minimal cost, EEDR can provide the agency with a digital copy of the approximately 400 pages of documents, as EEDR has a scanned copy of the materials the grievant submitted in conjunction with the prior ruling.

<sup>7</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).