

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: December 21, 2018; Ruling No. 2019-4828; 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 and Developmental Services  
Ruling Number 2018-4828  
December 21, 2018

The Department of Behavioral Health and Developmental Services (the “agency”) seeks a ruling concerning the grievant’s November 30, 2018 dismissal grievance.

FACTS

On November 30, 2018, the grievant initiated a grievance directly with the Office of Equal Employment and Dispute Resolution (“EEDR”) to challenge her November 29, 2018 separation from employment pursuant to a Group III Written Notice. Upon receipt of the grievance, the agency indicated that the grievant has been reinstated and made whole. Accordingly, the agency seeks a compliance ruling, arguing that the issues raised by the grievance are now moot.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>1</sup> Furthermore, EEDR has recognized that even if a grievant’s allegations are true there are still some cases when a hearing may be inappropriate, even if law and/or policy has been violated or misapplied. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, a hearing may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

In this case, the agency has rescinded the Group III Written Notice challenged by the November 30, 2018 grievance. At hearing, the agency would be required to show that the grieved disciplinary action was warranted and appropriate under the circumstances;<sup>2</sup> and in the event the agency failed to carry its burden, the potential remedy would be for the hearing officer to order that the discipline be rescinded.<sup>3</sup> However, this relief has already been granted by the agency. Because a grievance hearing on this matter would be unable to provide the grievant any other relief beyond that which has already been granted,<sup>4</sup> there is no reason for this issue to

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<sup>1</sup> See *Grievance Procedure Manual* § 4.1.

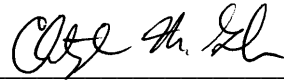
<sup>2</sup> See *Rules for Conducting Grievance Hearings* § VI(B)(1).

<sup>3</sup> *Id.*

<sup>4</sup> The grievant raises the issue of conflict with supervisors and lack of proper training for personnel as an underlying theory supporting her challenge to the termination. Though this grievance may not proceed to hearing, for the

proceed to a hearing. The grievance is therefore not qualified for hearing and will not proceed further. The file will be closed.

EEDR's rulings on compliance are final and nonappealable.<sup>5</sup>



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reasons outlined above, this ruling does not prevent the grievant from attempting to raise the allegations through a subsequent grievance should the behavior continue.

<sup>5</sup> Va. Code § 2.2-1202.1(5).