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**CONSOLIDATION RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2022-5314  
October 15, 2021

This ruling addresses the consolidation of the grievant's two grievances filed with the Department of Behavioral Health and Developmental Services (the "agency"). For the reasons discussed below, the Office of Employment Dispute Resolution ("EDR") at the Virginia Department of Human Resource Management finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

The two grievances at issue in this case are:

- 1) A May 20, 2021 grievance challenging an April 21, 2021 Group II Written Notice for alleged unsatisfactory performance, failure to follow instructions and/or policy, and disruptive behavior (Case Number 11718); and
- 2) An October 12, 2021 dismissal grievance challenging a September 14, 2021 Group II Written Notice with termination for alleged unsatisfactory performance, failure to follow instructions and/or policy, and other specified misconduct.

The agency has requested consolidation of these matters.

DISCUSSION

Approval by EDR in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EDR may consolidate grievances for hearing without a request from either party.<sup>1</sup> EDR strongly favors consolidation and will consolidate grievances when they involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.<sup>2</sup>

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<sup>1</sup> *Grievance Procedure Manual* § 8.5.

<sup>2</sup> *See id.*

EDR finds that consolidation of the May 20, 2021 and October 12, 2021 grievances is appropriate. These grievances involve the same grievant and could share common themes, claims, and witnesses. The grievances appear to relate to conduct by the grievant that resulted in similar and/or related actions issued. Further, we find that consolidation is not impracticable in this instance. Therefore, the two grievances are consolidated for a single hearing.<sup>3</sup> The parties will receive further correspondence from EDR regarding the appointment of a hearing officer for these matters.<sup>4</sup>

In closing, we note that the grievant has requested, through his attorney, for the consolidated hearing on these matters to take place in-person rather than by remote means.<sup>5</sup> The hearing officer may address that request following the appointment of the dismissal grievance. Pursuant to the *Grievance Procedure Manual*, “[i]n selecting the format of the hearing, the hearing officer must weigh all relevant considerations, including the opinions of the parties and the hearing officer. The hearing officer shall not select a hearing format that unfairly prejudices either party.”<sup>6</sup> We encourage the parties and the hearing officer to review EDR’s *Guidance for Conducting Hearings by Remote Means*, which describes relevant format-related considerations. These include “whether the participants have access to necessary technology such as a computer, tablet, or smartphone; whether the participants have reliable internet service; and whether the participants will be able to fully and reliably engage in the hearing process by remote means.”<sup>7</sup>

EDR’s rulings on compliance are final and nonappealable.<sup>8</sup>

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<sup>3</sup> Pursuant to the fee schedule established by EDR’s Hearings Program Administration policy, consolidated hearings shall be assessed a full fee for the first grievance and an additional half fee for the second grievance. See EDR Policy 2.01, *Hearings Program Administration*, Attach. B.

<sup>4</sup> Case Number 11718 has already been assigned to a hearing officer; the second grievance will be assigned to the same hearing officer for a single consolidated hearing.

<sup>5</sup> The hearing for Case Number 11718 is currently scheduled to occur by remote means. It appears that one or both parties may wish to reschedule the consolidated hearing to allow additional time to prepare.

<sup>6</sup> *Grievance Procedure Manual* § 5.2.

<sup>7</sup> EDR Guidance for Conducting Hearings by Remote Means at 1, [https://www.dhrm.virginia.gov/docs/default-source/default-document-library/guidance-for-conducting-hearings-by-remote-means.pdf?sfvrsn=b3987921\\_0](https://www.dhrm.virginia.gov/docs/default-source/default-document-library/guidance-for-conducting-hearings-by-remote-means.pdf?sfvrsn=b3987921_0).

<sup>8</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).