

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: February 12, 2013; Ruling No. 2013-3533; Agency: Department of Corrections; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2013-3533  
February 12, 2013

The grievant has asked for a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management regarding three grievances with the Department of Corrections (the agency). She alleges that the agency has failed to process the grievances properly under the grievance procedure.

FACTS

On or about November 2, 2007, the grievant initiated three grievances concerning a medical condition, accommodation issues, and her special diet needs. It appears that the grievant was required to eat at short intervals and was not permitted to bring food into her work location due to facility rules. As a result, the grievant was granted a transfer to a different position at the facility where she was not under the same food restrictions. In a May 18, 2008 e-mail, an agency manager indicated that the grievant had told him that as a result of the move she was discontinuing the grievances. It does not appear that anything in writing was provided by the grievant indicating that she was concluding the grievances.

More recently, it appears that the grievant has been moved to a position inside the facility she had held prior to the apparently agreed accommodation in 2008. The grievant appears to have initiated a new grievance about these issues. However, she also seeks to pursue her three November 2, 2007 grievances. She argues that the agency is noncompliant in not allowing the three grievances to proceed at this time and seeks a compliance ruling on the matter from EDR.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without EDR's involvement. Specifically, the party claiming noncompliance must first notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the

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<sup>1</sup> *Grievance Procedure Manual* § 6.

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

party fails to correct the alleged noncompliance, the complaining party may request a ruling from EDR.<sup>3</sup>

In this case, the grievant has provided the agency with a notice of noncompliance for an alleged failure to proceed with the November 2, 2007 grievances. However, it appears that these grievances were closed in May 2008 based on the oral representations of the grievant. Although it would have been more appropriate to have had the grievant sign the grievances indicating her intent to conclude them, the failure to do so, if it was not done, should not permit these grievances to be re-opened to proceed at this late date. If the grievant had not been in agreement with concluding her grievances, she likely would have raised that matter in 2008 when the agency discontinued any activity with the grievances. In short, the grievant's behavior in the interim is consistent with the position that the grievances were concluded with her consent.

Because the grievances were effectively closed, there is no basis for an allegation of noncompliance. The grievant's recent move to a new position does not warrant re-opening the November 2, 2007 grievances. Rather, the issues that have arisen could be the proper subject of a new grievance. The grievant's ruling request is denied.

EDR's rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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

<sup>4</sup> Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).