

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: August 25, 2014; Ruling No. 2012-3306, 2012-3307, 2012-3308, 2012-3309; 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 Numbers 2012-3306 through 2012-3309
August 25, 2014

The grievant has requested to re-open four of his grievances, dated August 9, 2010, November 5, 2010, October 27, 2010, and November 2, 2010 (Grievances 1 – 4), which were closed on December 10, 2010 pursuant to a settlement agreement entered into by the grievant and the Department of Corrections (the agency). The grievant asserts that the agency has not upheld part of the agreement and, thus, he seeks to “reinstate” Grievances 1 – 4. Specifically, the grievant asserts that in the agreed transfer to a new facility, he was promised state housing at the new facility. In theory, where the grievant closed his grievances pursuant to a settlement agreement, the failure of the agency to uphold its part of the agreement could be potential grounds to consider re-opening the closed grievances. However, the settlement agreement does not include any provision that addresses state housing for the grievant. Consequently, we are loathe to intrude upon the parties’ agreement where it appears that the written terms have been followed and in the absence of compelling evidence to the contrary.

In addition, subsequent to the grievant’s original request to re-open Grievances 1 – 4, which was received March 21, 2012, the grievant spent additional time on military leave. This ruling was placed on hold at the grievant’s request at that time. The grievant recently notified EDR that he wished to proceed with his ruling request as he was returning from military leave. Given the length of time these four grievances have been settled, even if they were to be re-opened, they essentially assert claims that are stale and potentially moot as they arose at the grievant’s former facility. Furthermore, to the extent the grievant may have an argument that the agency is not providing him housing at his new facility, that argument could possibly be raised as part of a new grievance.¹ As such, there is no basis to grant the grievant’s extraordinary request to re-open Grievances 1 – 4.² EDR’s rulings on matters of compliance are final and nonappealable.³

A handwritten signature in black ink, appearing to read "Chris M. Grab".

Christopher M. Grab
Director
Office of Employment Dispute Resolution

¹ Such a grievance would have to meet the grievance procedure requirements for access and compliance and this ruling makes no findings as to those issues for any such future grievance. *See Grievance Procedure Manual* §§ 2.3, 2.4.

² This ruling does not address whether the grievant may have other legal and/or equitable claims better raised in the court system as to his arguments regarding the settlement agreement.

³ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).