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**COMPLIANCE RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2020-5057  
March 13, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)<sup>1</sup> on whether her February 6, 2020 grievance with the Department of Behavioral Health and Developmental Services (the “agency”) is in compliance with the grievance procedure.

FACTS

On or about September 25, 2019, the grievant received a Notice of Improvement Needed memorandum. Management subsequently emailed the grievant a copy of her annual performance evaluation on November 6, and met with her on November 7 to discuss the evaluation.<sup>2</sup> The grievant filed a grievance with the agency on December 30, challenging the Notice of Improvement Needed, her performance evaluation, and other supervisory actions. The agency administratively closed the December 30 grievance due to initiation noncompliance because the grievant did not challenge any management actions or omissions that had occurred within the previous 30 calendar days. The grievant appealed the administrative closure of her grievance to the agency head, but did not request a ruling on the matter from EDR.<sup>3</sup> On January 22, 2020, the agency head responded to the grievant and declined to re-open the grievance. The grievant provided the agency with a rebuttal to the agency head’s response on February 6.

Also on February 6, 2020, the grievant initiated a second grievance with the agency alleging that her “support needs were not met by [her] direct supervisor” and that she had been “denied the support that has been afforded to [her] colleagues, out of retaliation.” The grievant further claims that she has not had “any supervisions” since August 28, 2019 and that the agency did not “provide supervisions to substantiate their allegations” in the Notice of Improvement

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> It is unclear what overall rating the grievant received on her performance evaluation, though that detail has no impact on EDR’s analysis or the outcome of this ruling.

<sup>3</sup> Pursuant to Section 6.2 of the *Grievance Procedure Manual*, an employee may request a compliance ruling from EDR to challenge an agency’s administrative closure of a grievance due to initiation noncompliance.

Needed or her annual performance evaluation. As relief, the grievant requests that “[a]n appropriate meeting be held to address the inaccurate allegations documented in the” Notice of Improvement Needed and her performance evaluation and revision of those documents “due to numerous discrepancies.”

On February 7, 2020, the agency notified the grievant that the February 6 grievance would be administratively closed because it did not comply with the initiation requirements of the grievance procedure.<sup>4</sup> More specifically, the agency explained that the February 6 grievance was not timely to challenge the Notice of Improvement Needed or her annual performance evaluation, did not challenge any other management actions or omissions that had occurred within the previous 30 calendar days, and was duplicative of the December 30 grievance. The grievant now appeals that determination to EDR and seeks to re-open the February 6 grievance.

### DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.<sup>5</sup> When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. The grievance procedure further provides that a grievance must not challenge the same management action challenged by another grievance.<sup>6</sup>

In this case, the agency asserts that the December 30 and February 6 grievances challenge the same underlying management actions: the grievant’s receipt of the Notice of Improvement Needed and her annual performance evaluation. The agency also argues that, in addition to being duplicative, the February 6 grievance is untimely to dispute those management actions because they occurred more than 30 calendar days before February 6. In response, the grievant contends that agency management has been “holding weekly supervisions with other staff,” led the grievant to believe that a meeting would be scheduled with her but did not actually do so, and failed to monitor her progress in complying with the terms of the Notice of Improvement Needed. The grievant has further reiterated her request for “an appropriate supervision meeting addressing the inaccurate allegations documented in the [Notice of Improvement Needed] and performance evaluation.”

Having carefully considered the parties’ arguments, EDR finds that the primary actions challenged in the February 6 grievance are the grievant’s receipt of the Notice of Improvement Needed and her annual performance evaluation, which were challenged in a previous grievance and also took place more than 30 calendar days before the initiation of the grievance. The date of the challenged management action listed on the February 6 grievance is also February 6: the same date the grievant submitted her rebuttal to the agency head’s denial of her request to re-open the December 30 grievance.<sup>7</sup> Other than the grievant’s allegation that her supervisor has engaged in

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<sup>4</sup> See *Grievance Procedure Manual* § 2.4.

<sup>5</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

<sup>6</sup> *Grievance Procedure Manual* § 2.4.


<sup>7</sup> To the extent the February 6 grievance may be understood as seeking relief from alleged noncompliance related to the agency’s closure of the December 30 grievance, EDR notes that grievances filed for the purpose of obtaining relief from agency noncompliance may be administratively closed. *Grievance Procedure Manual* § 2.4 (stating that an employee may not file a grievance “seeking relief from alleged agency noncompliance with the grievance procedure”).

an ongoing failure to provide “supervisory support,” she has not identified any specific management actions in the grievance except the Notice of Improvement Needed and her performance evaluation. The February 6 grievance includes six pages of attachments, which consist of meeting agendas from February 22 to August 28, 2019. The same attachments were included with the December 30 grievance that was administratively closed by the agency. The relief requested in both grievances is also substantially the same: revision and/or removal of the Notice of Improvement Needed and her annual performance evaluation. To the extent the February 6 grievance seeks to challenge the merits of the Notice of Improvement Needed and the grievant’s performance evaluation, it is both duplicative and untimely.

As to the grievant’s assertions regarding the agency’s failure to provide appropriate supervision, EDR generally considers a claim about ongoing workplace conduct to have been raised in a timely manner if some agency action alleged to be part of the conduct occurred within the 30 calendar days preceding the initiation of the grievance.<sup>8</sup> While an agency’s failure to provide appropriate supervision or hold meetings with a grievant may be an appropriate subject for a grievance, EDR finds that the facts alleged by the grievant here do not support a conclusion that the February 6 grievance should be allowed to proceed. While the grievant claims that management has not held any meetings about her performance since August 28, 2019, at least one such meeting occurred on November 7, when the grievant met with her supervisor to discuss her performance evaluation. The agency has also provided EDR with emails showing that the grievant declined her supervisor’s attempts to meet with her on no fewer than three other occasions in October and November 2019. Consistently meeting with an employee to provide feedback and address performance issues is a good management practice, but EDR has not reviewed evidence to show that agency management was under an affirmative obligation to hold such meetings with the grievant in this case and failed to do so.<sup>9</sup> EDR has been unable to identify any specific management action(s) or omission(s) relating to the agency’s supervision of the grievant that occurred within the 30 calendar days preceding the initiation of the grievance. Accordingly, EDR concludes that the grievance is not timely as to this issue.

### CONCLUSION

For the reasons set forth above, the grievant’s February 6, 2020 grievance will remain closed. The parties are advised that the grievance should be marked as concluded due to initiation noncompliance and no further action is required. EDR’s rulings on matters of compliance are final and nonappealable.<sup>10</sup>



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<sup>8</sup> See EDR Ruling No. 2020-4991 (explaining how EDR applies this rule in cases involving a claim of discrimination, retaliation, and/or workplace harassment).

<sup>9</sup> An ongoing refusal by supervisors to meet with an employee, especially to address any ongoing alleged performance deficiencies, if any, could be a valid concern to address in a grievance. However, based on the grievant’s descriptions of the actions grieved and her request for relief, that is not what the grievant is challenging in her grievance.

<sup>10</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).