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CONSOLIDATION RULING

In the matter of the Virginia Community College System
Ruling Number 2021-5219
February 25, 2021

This ruling addresses the consolidation of the grievant's two grievances filed with the Virginia Community College System (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 a September 30, 2020 grievance alleging retaliation and an arbitrary and capricious performance evaluation arising out of a Notice of Improvement Needed/Substandard Performance (Case Number 11627), and a February 11, 2021 dismissal grievance alleging retaliation and challenging the following management actions:

- 1) A January 29, 2021 Group II Written Notice for failure to report without notice, failure to follow instructions and/or policy, and insubordination;
- 2) A February 1, 2021 Group II Written Notice with termination for failure to report without notice, failure to follow instructions and/or policy, insubordination, and other issues;
- 3) A second February 1, 2021 Group II Written Notice, also with termination, for insubordination;
- 4) An alleged arbitrary and capricious performance evaluation delivered to the grievant on January 25, 2021.¹

Both parties have requested consolidation of these matters.

¹ Although the dismissal grievance only refers directly to the February 1 Group II Written Notices and the grievant's performance evaluation, the agency appears to have agreed that the January 29 Group II Written Notice will also be before the hearing officer.

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.² 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.³

EDR finds that consolidation of the September 30, 2020 and February 11, 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.⁴ The parties will receive further correspondence from EDR regarding the appointment of a hearing officer for these matters.⁵

EDR's rulings on compliance are final and nonappealable.⁶

Christopher M. Grab
Director
Office of Employment Dispute Resolution

² *Grievance Procedure Manual* § 8.5.

³ *See id.*

⁴ 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.

⁵ Case Number 11627 has already been assigned to a hearing officer. The second grievance will be assigned to the same hearing officer for a single consolidated hearing.

⁶ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).