

Issue: Compliance-administrative closure of grievance; Ruling Date: January 10, 2002;  
Ruling #2001-228; Agency: Department of Conservation of Recreation; Outcome:  
agency in compliance

*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Conservation and Recreation  
Ruling Number 2001-228  
January 10, 2002

**Issue:**

May the agency administratively close the grievant's August 24, 2001 grievance as out of compliance with the grievance procedure?

**Ruling:**

Yes. Under this Department's longstanding practice, the agency may now administratively close the grievance by notifying the grievant in writing (1) that the grievance has been administratively closed, and (2) that the grievant may challenge the closing of his grievance by requesting a compliance ruling from this Department within five business days of his receipt of the agency's written notification of closure.<sup>1</sup>

If the grievant makes no timely challenge, the grievance remains closed. The grievance could be reopened only if the grievant requests a ruling, on a timely basis, and this Department finds that there was just cause (e.g. grievant's physical or mental incapacity) for the grievant's failure to advance the grievance within five workdays after receiving the agency's December 7, 2001 written notice. This Department's rulings on matters of compliance are final and nonappealable.<sup>2</sup>

**Explanation:**

On August 24, 2001, the grievant initiated a grievance to challenge the issuance of a *Notice of Improvement Needed/Substandard Performance*. The grievant elected not to present his grievance to his immediate supervisor and checked the appropriate block on the Form A indicating discrimination or retaliation as the reason. The grievant delivered his grievance to the office of the designated second-step respondent, whom he believed should provide the first-step response. On August 31, 2001, the grievant received a first-step response from the management official who had issued the *Notice of Improvement/Substandard Performance*.<sup>3</sup>

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<sup>1</sup> See Grievance Procedure Manual, § 6.3, p 17.

<sup>2</sup> See Va. Code § 2.2-1001 (5).

<sup>3</sup> This manager was his supervisor's immediate supervisor, and therefore, under the grievance procedure, was the proper official to provide the first-step response. (See Grievance Procedure Manual, § 2.4, page 7).

On September 21, 2001, the grievant requested a compliance ruling from this Department alleging that the agency was out of compliance by failing to provide a written response from the proper first-step respondent. On November 28, 2001, this Department ruled that the issue was premature because the grievant had not notified the agency head in writing of the alleged procedural violation, as required by the grievance procedure.

The agency claims that after receiving the November 28 ruling, the grievant both failed to notify the agency head of the alleged noncompliance or to advance his grievance to the next resolution step. In a December 7, 2001 letter, the agency notified the grievant that he had been out of compliance with the grievance procedure by failing to advance or conclude his grievance after receiving this Department's November 27 ruling. The agency's letter further advised the grievant that the agency would administratively close his grievance if he did not advance or conclude it within an additional five workdays (by close of business December 14, 2001). Because the grievant failed to advance or conclude his grievance by December 14, it may be administratively closed.

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