

Issue: Compliance-Consolidation of grievances for purposes of hearing; Ruling Date: March 7, 2002; Ruling #2002-051; Agency: Department of Correctional Education; Outcome: consolidated



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Correctional Education/ No. 2002-051
March 7, 2002

ISSUE:

Should the grievances filed by the grievant on January 11, 2002 with the Department of Correctional Education (DCE) be consolidated for hearing?

RULING:

This Department holds that consolidation of the grievances cited above is appropriate under the circumstances. Thus, the grievances should proceed to hearing as one grievance. Please note, however, that consolidation should not prevent the hearing officer from addressing the grievances separately as needed for purposes of establishing procedural aspects of the hearing or in determining the substantive merit of each grievance. This Department's rulings on matters of compliance are final and nonappealable. (See Va. Code § 2.2-3003(G)).

EXPLANATION:

The grievant received a Group II Written Notice with 10 days suspension on December 17, 2001 for allowing DCE employees to be supervised by employees of the Department of Corrections (DOC) and for misapplying annual leave policy. On that same day, the grievant received another Group II Written Notice with another 10 days suspension for failing to take appropriate action after becoming aware of acts of harassment against a DCE employee by a DOC employee. As a result of these disciplinary actions, DCE demoted the grievant with a reduction of pay. The grievant initiated his grievances on January 11, 2002, challenging both of these written notices and requesting that he be reinstated to his former position and salary.

This Department has long held that grievances may be consolidated by mutual agreement of the parties, or absent such an agreement, by this Department whenever the grievances challenge the same action or series of actions or arise out of the same facts. In this case, a mutual agreement to consolidate did not initially exist. Thus, this Department must determine whether the two grievances arise out of the same facts. At first glance, the

grievant's written notices appear to be unrelated. However, both written notices involve the same parties. The DOC employee who was allegedly supervising DCE employees is the same DOC employee who is accused of sexually harassing a DCE employee, the subject of the second written notice. Moreover, the DCE employee whose annual leave rights were allegedly violated in the first written notice is the same employee who claims she was sexually harassed. Therefore, it appears that the two written notices arise out of the same facts and involve the same witnesses, so consolidation in this case is appropriate.

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