

Issue: Compliance/consolidation of grievances for purposes of hearing; Ruling Date: February 28, 2003; Ruling #2003-029; Agency: Department of Corrections; Outcome: grievances consolidated



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR
In the matter of Department of Corrections
Ruling Number 2003-029
February 28, 2003

The agency has requested a compliance ruling regarding two grievances initiated by the grievant on December 26, 2002. The agency requests that the two grievances be consolidated for a single hearing, to which the grievant agrees. For the reasons discussed below, the two grievances are consolidated and will proceed to hearing as one grievance.

FACTS

The grievant is employed as a Corrections Officer. On December 20, 2002, he was issued a Group III Written Notice with suspension for alleged violation of the agency's sexual harassment policy. On December 26, 2002, he initiated separate grievances claiming: (1) disparate disciplinary action based on race in one grievance and (2) unwarranted disciplinary action in the other. The two grievances proceeded through the respondent steps together.

DISCUSSION

Written approval by the Director of this Department, or her designee, in the form of compliance ruling is required before two or more grievances are permitted to be consolidated for purposes of hearing. EDR strongly favors consolidation and will grant consolidation when grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.¹

Further, under the grievance procedure, an employee's grievance must not duplicate another grievance challenging the same action or arising out of the same facts. If there is duplication, management may notify the employee that the grievance will be administratively closed due to noncompliance.² The employee may request, within 5 workdays of receiving notice that the grievance has been closed, that this Department decide whether the grievance is in compliance and can proceed. Although the agency did not specifically base its consolidation request on the contention that two grievances arose out of the same facts, this provision of grievance procedure governs.

¹ *Grievance Procedure Manual* § 8.5, page 22.

² *Grievance Procedure Manual*, § 2.4, pages 6 and 7. The agency did not challenge the grievances as being duplicative.

This Department finds that the two grievances arise out of the same material facts (the alleged sexual harassment) and therefore should be consolidated and proceed as one grievance to hearing. This Department's rulings on compliance are final and nonappealable.³

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³ Va. Code § 2.2-1001 (5).