

Issue: Compliance/ agency wishes to close grievance administratively due to non-compliance; Ruling Date: February 18, 2004; Ruling #2004-571; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: agency out of compliance, failed to notify grievant the require notice of noncompliance



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**  
**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Mental Health, Mental Retardation and Substance Abuse  
Services

Ruling Number 2004-571

February 18, 2004

The agency has requested a compliance ruling regarding a grievance initiated by the grievant on October 17, 2003. The agency requests permission to close the grievance administratively due to noncompliance.

FACTS

The grievant was formerly employed as a MR Services Specialist I. On October 17, 2003, she was issued a Group II Written Notice with termination for failure to follow policy and her supervisor's instructions. On the same date, the grievant initiated a grievance to challenge the disciplinary action and her termination. The grievance proceeded through the second-step without resolution.<sup>1</sup> On December 5, 2003, the grievant was notified telephonically that the second-step response had been completed and was available for pick up. The grievant agreed to come to the facility to pick up her Form A, but failed to do so.

On December 16, the agency forwarded the grievant a letter of noncompliance for failure to take action to either advance or to conclude her grievance. On December 22, 2003, the grievant forwarded an email requesting that her grievance be forwarded to her home, which she received on December 30, 2003. After the receipt of her grievance, she took no subsequent action to either advance or to conclude her grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance

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<sup>1</sup> At the first respondent step, the grievant failed to timely advance her grievance. On November 24, 2003, the agency notified the grievant that she was out of compliance for failure to either advance or to conclude her grievance within five workdays of receiving the first-step response. On December 2, 2003, the grievant elected to advance her grievance, thereby correcting the noncompliance.

<sup>2</sup> *Grievance Procedure Manual*, § 6, pages 16-18.

problems voluntarily, without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the grievant is the noncompliant party and fails to correct the alleged noncompliance within five work days of receiving the notice of noncompliance, this Department has long held that the agency may administratively close the grievance by notifying the grievant in writing (i) that the grievance has been administratively closed, and (ii) that the grievant may challenge the closing of her grievance by requesting a compliance ruling from this Department.<sup>3</sup>

Based upon the facts of this case, this Department concludes that the agency's request to close the grievance is premature because the agency has failed to give the grievant the required notice of noncompliance. Upon receipt of the second-step response on December 30, 2003, the grievant had five workdays in which to either advance or to conclude her grievance. When she failed to take the required action, a condition of noncompliance arose. At that time, the agency should have sent a letter notifying the grievant of her noncompliance.

The agency, however, did not provide the grievant with a notice of noncompliance following her failure to timely advance or conclude her grievance. Accordingly, the agency still must provide the grievant the required notice of noncompliance before it can close the grievance. If the grievant fails to correct the noncompliance within five workdays of receipt of the agency's notice, the agency may then administratively close the grievance but must inform the grievant that the grievance has been closed and that the grievant may challenge the closing of her grievance by requesting a compliance ruling from this Department. This Department's rulings on compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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June M. Foy  
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<sup>3</sup> Cf. *Grievance Procedure Manual*, § 6.3, page 17.

<sup>4</sup> Va. Code § 2.2-1001.

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