

Issue: Compliance/agency requests permission to close grievance administratively due to noncompliance; Ruling Date: February 19, 2004; Ruling #2004-572; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: notice was given; grievant out of compliance; agency may close grievance



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 2004-572

February 19, 2004

The agency has requested a compliance ruling regarding a grievance initiated by the grievant on December 1, 2003. The agency requests permission to close the grievance administratively due to noncompliance.

FACTS

At the time of her grievance, the grievant was employed as a MR Service Specialist I.¹ On December 1, 2003, she initiated a grievance claiming harassment by her supervisor. On December 9, 2003, the first-step response was completed and the grievant was notified telephonically to pick up her Form A. The grievant, however, failed to pick up her Form A or to take any action regarding her grievance.

On December 19, 2003, the grievant met with the facility director on an unrelated personnel matter. At that meeting, the facility director handed a sealed envelope to the grievant and informed her that it pertained to her grievance. The sealed envelope contained a memorandum dated December 19, 2003, informing the grievant of her alleged noncompliance for failing to take any action regarding her grievance. Further, that she must correct the noncompliance within five workdays or jeopardize her rights under the grievance procedure. After accepting the envelope, the grievant reportedly threw it in the trash stating to the facility director that she was not interested in the contents. The grievant has taken no subsequent action to advance her December 1 grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays

¹ On December 19, 2003, the grievant was disciplined and terminated.

² *Grievance Procedure Manual*, § 6, pages 16-18.

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.³

In this case, the agency gave the grievant the prerequisite notice of noncompliance on December 19, 2003, although she elected to place the notification in the trash without reading it. The agency may now administratively close the grievance with required written notification to the grievant as cited above. The written notification should be forwarded to the grievant at her last known address. This Department's rulings on compliance are final and nonappealable.⁴

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

³ Cf. *Grievance Procedure Manual*, § 6.3, page 17.

⁴ Va. Code § 2.2-1001.