

Issue: Compliance/permission to administratively close grievance; Ruling Date: May 11, 2005; Ruling #2005-1011; Agency: State Board of Elections; Outcome: agency may administratively close grievance

*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR

In the matter of State Board of Elections  
Ruling Number 2005-1011  
May 11, 2005

The State Board of Elections (SBE or the agency) requests a compliance ruling in the grievant's March 29, 2004, September 2, 2004 and October 29, 2004 grievances. Specifically, the agency seeks permission to administratively close these grievances as a result of the grievant's failure to comply with EDR's rulings dated February 9, 2005 and March 23, 2005. For the reasons discussed below, this Department concludes that SBE may administratively close the grievant's March 29, 2004, September 2, 2004 and October 29, 2004 grievances.

FACTS

In a ruling dated February 9, 2005, this Department ordered the parties to take action on the grievant's September 2, 2004 and October 29, 2004 grievances within 10 calendar days of the date of the ruling (i.e., by February 19, 2005). Specifically, the grievant was ordered to advance or conclude her October 29<sup>th</sup> grievance and return the Form A to SBE, while SBE was directed to send the grievant a copy of the September 2<sup>nd</sup> grievance. Additionally, the February 9<sup>th</sup> ruling qualified the grievant's March 29, 2004 grievance and consolidated it with the October 29<sup>th</sup> grievance and September 2<sup>nd</sup> grievance (if otherwise not resolved in the management resolution steps). The agency complied with the February 9<sup>th</sup> ruling and provided the grievant a copy of the September 2<sup>nd</sup> grievance. The grievant, on the other hand, did not advance or conclude her October 29<sup>th</sup> grievance within the allotted time period, and as a result, on February 24, 2005, the agency sought a ruling allowing it to administratively close the September 2<sup>nd</sup> and October 29<sup>th</sup> grievances.

In responding to the agency's February 24, 2005 ruling request, the investigating EDR Consultant discovered that due to an error by EDR with respect to the grievant's new mailing address, the grievant did not receive EDR's February 9<sup>th</sup> ruling until March 1, 2005, and thus could not have possibly complied with the order to take action by February 19<sup>th</sup>. Due to the error, this Department declined to rule on administrative closure, but rather directed the grievant in a March 23, 2005 ruling to indicate on the two grievance forms her desire to either advance or conclude the September 2<sup>nd</sup> and October 29<sup>th</sup> grievances and to mail the two grievance forms to the agency within 5 calendar days from her receipt of the March 23<sup>rd</sup> ruling. The grievant was further advised that if she failed to do as directed without just cause, the September 2<sup>nd</sup> and October 29<sup>th</sup> grievances would be administratively closed upon request of the agency.

In a letter dated April 7, 2005, the agency renewed its request to administratively close the September 2<sup>nd</sup> and October 29<sup>th</sup> grievances as a result of the grievant's failure to comply with this Department's March 23<sup>rd</sup> ruling. In addition, the agency seeks to administratively close the grievant's March 29, 2004 grievance.

### DISCUSSION

The grievant received this Department's March 23<sup>rd</sup> ruling on March 25, 2005. As such, the grievant had until March 30, 2005 to either advance or conclude her September 2<sup>nd</sup> and October 29<sup>th</sup> grievances. The grievant failed to comply within the allotted time period and has offered no "just cause" for such failure.<sup>1</sup> Accordingly, the agency is now permitted to administratively close the September 2, 2004 and October 29, 2004 grievances. Additionally, because the March 29, 2004 does not present issues that automatically qualify for hearing, but rather was only qualified for hearing because of its consolidation with the October 29<sup>th</sup> grievance, it too may be administratively closed by the agency. This Department's rulings on compliance are final and nonappealable.<sup>2</sup>

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Claudia T. Farr  
Director

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Jennifer S.C. Alger  
EDR Consultant

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<sup>1</sup> The investigating consultant attempted unsuccessfully to speak to the grievant telephonically regarding the alleged noncompliance. Additionally, a letter was sent to the grievant on April 28, 2005 instructing her to contact the investigating consultant by the close of business on May 6, 2005. The letter further advised the grievant that if she failed to contact the investigating consultant by the deadline, a ruling could be issued without the benefit of her input. The grievant did not respond to this Department's telephone call or subsequent correspondence.

<sup>2</sup> Va. Code § 2.2-3003(G).