

Issue: Qualification/grievant claims agency misapplied and unfairly applied agency policy;  
Consolidation/consolidate grievances for purposes of hearing; Ruling Date: January 6, 2006;  
Ruling #2006-1112; Agency: Department of Social Services; Outcome: qualified and  
consolidated with previously qualified grievance for purposes of hearing



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

QUALIFICATION AND CONSOLIDATION  
RULING OF DIRECTOR

In the matter of Department of Social Services  
Ruling Number 2006-1112  
January 6, 2006

The grievant has requested a ruling on whether her July 29, 2005 grievance with the Department of Social Services (DSS or the agency) qualifies for a hearing. The grievant claims that the agency has misapplied and unfairly applied agency policy. For the following reasons, this grievance is qualified for a hearing.

FACTS

The grievant was employed with the agency as a Program Manager. On June 28, 2005, the grievant tendered her resignation to the agency, effective August 1, 2005. On July 27, 2005, prior to her separation from employment, the grievant submitted a written request to her supervisor to rescind her resignation. Her supervisor denied her request without explanation.

On July 29, 2005, her last day of work, the grievant initiated a grievance challenging the agency's refusal to allow her to rescind her resignation. She alleges that the agency misapplied and/or unfairly applied Department of Human Resource Management (DHRM) Policy 1.70. After the parties failed to resolve the grievance during the management resolution steps, the grievant asked the agency head to qualify her grievance for hearing. The agency head denied the grievant's request, and the grievant has appealed the agency head's determination to this Department.

On August 12, 2005, the grievant initiated a second grievance challenging the agency's failure to allow her to rescind her resignation. In this second grievance, the grievant asserts that the agency's actions were arbitrary and capricious and were in retaliation for her allegedly threatening to use the grievance procedure. The agency rejected the August 12<sup>th</sup> grievance on the ground that the grievant lacked access to the grievance procedure. The grievant appealed the agency's decision to this Department, which subsequently ruled that the grievant had access to the grievance procedure.<sup>1</sup> After the parties failed to resolve the August 12<sup>th</sup> grievance during the management resolution steps, the agency head qualified the grievance for hearing.

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<sup>1</sup> See EDR Ruling No. 2006-1151.

### DISCUSSION

The grievant has asked this Department to qualify her July 29, 2005 grievance for hearing. That grievance challenges the same management action as the August 12<sup>th</sup> grievance already qualified by the agency—namely, the agency’s refusal to allow the grievant to rescind her resignation. In addition, both the July 29<sup>th</sup> and August 12<sup>th</sup> grievances raise similar, if not identical, objections to the agency’s action. Although the *Grievance Procedure Manual* provides that a grievant may not challenge the same management action in more than one grievance,<sup>2</sup> the agency has not raised, and has therefore waived, this objection. Under these particular circumstances, we deem it appropriate to qualify the grievant’s July 29<sup>th</sup> grievance for hearing and consolidate it with the August 12<sup>th</sup> grievance. Because both grievances challenge the same management action and raise similar claims, qualification of the July 29<sup>th</sup> grievance and its consolidation with the August 12<sup>th</sup> grievance will help assure a full exploration of interrelated facts and issues.<sup>3</sup>

### CONCLUSION

For the reasons discussed above, this Department concludes that the grievant’s July 29, 2005 grievance is qualified and shall advance to hearing with her August 12, 2005 pending grievance to be heard by a single hearing officer at a single hearing. As the agency has already requested the appointment of a hearing officer for the grievant’s August 12<sup>th</sup> grievance, it is unnecessary for the agency to complete an additional Form B with respect to the grievant’s July 29<sup>th</sup> grievance.

This Department’s rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Director

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<sup>2</sup> *Grievance Procedure Manual* § 2.4 (“An employee’s grievance must . . . [n]ot challenge the same management action challenged by another grievance.”)

<sup>3</sup> This Department has long held that it may consolidate grievances with or without a request from either party whenever more than one grievance is pending involving the same parties, legal issues, and/or factual background. *Grievance Procedure Manual* § 8.5. EDR strongly favors consolidation and will grant consolidation unless there is a persuasive reason to process the grievances individually. *Id.* Consolidation of these grievances should provide an effective and efficient means of resolving the related disputes at hand.

<sup>4</sup> Va. Code § 2.2-1001(5).