

Issue: Compliance/Discrimination/Sex/Sexual Harassment; Performance  
Evaluation/Arbitrary/Capricious Perform; Retaliation/Grievance activity participation;  
Ruling Date: October 7, 2005; Ruling #2006-1155; Agency: Department of  
Correctional Education; Outcome: grievant in compliance



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Correctional Education  
Ruling No. 2006-1155  
October 7, 2005

The grievant has requested a compliance ruling in his September 2, 2005 grievance with the Department of Correctional Education (DCE or the agency). The agency asserts that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure. For the reasons set forth below, the grievance is timely.

**FACTS**

In his September 2<sup>nd</sup> grievance, the grievant challenges his August 3, 2005 performance observation and rating as retaliatory and arbitrary and capricious. The grievant mailed his grievance via certified mail on September 2, 2005.<sup>1</sup> On September 15, 2005, the agency administratively closed the grievance at the second management resolution step for non-compliance with the procedural requirements of the grievance procedure, claiming that it received the grievance on September 7, 2005, after the 30 calendar day time frame had expired.

**DISCUSSION**

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>2</sup> It is incumbent upon the grievant to initiate a grievance in a manner that would allow for verification of the date of initiation – for example, by obtaining a date-stamp, postmark, or mailing receipt.<sup>3</sup> Further, this agency has long held that the date of mailing constitutes the date of initiation. When an employee initiates a grievance beyond the 30 calendar day period without just cause, the

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<sup>1</sup> To verify date of mailing, the grievant provided this Department with a copy of the certified mail receipt as well as a customer receipt both dated September 2, 2005. Moreover, in its second management resolution step-response, the agency confirms that the grievance was mailed on September 2, 2005.

<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

<sup>3</sup> See EDR Rulings 2003-147 and 2004-608.

grievance is not in compliance with the grievance procedure, and may be administratively closed.

In this case, the event that forms the basis of the September 2<sup>nd</sup> grievance is the August 3<sup>rd</sup> performance observation and rating. Thus, the grievant had thirty calendar days, or until September 2, 2005, to file a grievance. As stated above, the grievant initiated his grievance on September 2<sup>nd</sup> (the date of the certified mail receipt) and as such, did so in a timely manner.

#### CONCLUSION

The grievant's September 2, 2005 grievance claiming that his performance observation and rating were retaliatory and arbitrary and capricious was filed within the 30 calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has 5 workdays from receipt of this ruling to either conclude the grievance or request to advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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Jennifer S.C. Alger  
EDR Consultant

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<sup>4</sup> See Va. Code § 2.2-1001(5).