

Issue: Consolidation/consolidate four grievances for purposes of hearing; Ruling Date: March 3, 2006; Ruling #'s 2006-1285, 2006-1286, 2006-1287, 2006-1288; Agency: Virginia Community College System; Outcome: consolidated for purposes of hearing

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## *COMMONWEALTH of VIRGINIA*

### ***Department of Employment Dispute Resolution*** **CONSOLIDATION RULING OF DIRECTOR**

In the matter of Virginia Community College System  
Ruling Number 2006-1285, 2006-1286, 2006-1287, and 2006-1288  
March 3, 2006

The grievant seeks a consolidation ruling regarding one grievance she initiated on November 8, 2005, and three grievances initiated on January 4, 2006. The issue is whether the four grievances should be consolidated for a single hearing, to which the agency agrees. For the reasons discussed below, the four grievances are consolidated and will proceed to hearing together. The hearing officer, in his discretion, may address the four actions separately in one decision, or in four separate decisions.

#### FACTS

The grievant was formerly employed by the agency as a Classified Team Leader. On October 25, 2005, she was issued a Group II Written Notice for unsatisfactory work performance and failure to follow supervisor's instruction. On the same date, she was also issued a Notice of Improvement Needed/Substandard Performance. On November 8, 2005, the grievant initiated a grievance to challenge the disciplinary action and Notice of Improvement Needed/Substandard Performance, as retaliatory for her prior complaints of discriminatory treatment and misapplication of policy. The grievance was unresolved during the management respondent steps, and on February 14, 2006, was qualified for hearing by the agency head.

On December 7, 2005, the grievant was issued her annual performance evaluation with an overall rating of **Below Contributor**. On January 4, 2006, she initiated a grievance to challenge the performance evaluation as a misapplication of policy, and as retaliatory for her prior use of the grievance procedure and her complaints of discrimination. The grievance was unresolved during the management respondent steps, and on February 14, 2006, was qualified for hearing by the agency head.

On December 19, 2005, she was again issued a Group II Written Notice for unsatisfactory work performance and failure to follow supervisor's instruction. On the same date, she was also issued a Notice of Improvement Needed/Substandard Performance. On January 4, 2006, the grievant initiated a third grievance to challenge the disciplinary action and Notice of Improvement Needed/Substandard Performance as retaliatory for her prior use of the grievance procedure and complaints of discriminatory

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treatment. The grievance was unresolved during the management respondent steps, and on February 14, 2006, was qualified for hearing by the agency head.

Also on December 19, 2005, the grievant was issued a Group II Written Notice with termination for unsatisfactory attendance. On January 4, 2006, she initiated a fourth grievance challenging the disciplinary action and her termination as retaliatory for her prior use of the grievance procedure and her complaints of discrimination. The grievance was unresolved during the management respondent steps, and on February 14, 2006, was qualified for hearing by the agency head.

### DISCUSSION

Written approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances are permitted to be consolidated in a single hearing. EDR strongly favors consolidation and will grant consolidation when grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.<sup>1</sup>

This Department finds that consolidation of the November 8, 2005, and three January 4, 2006 grievances is appropriate. The grievances involve the same parties, potentially many of the same witnesses, share a common factual background, and are essentially inextricably intertwined. Furthermore, consolidation is not impracticable in this instance and will help to assure a full exploration of what could be interrelated facts and issues by a single factfinder. However, this Department recognizes that as a result of the consolidation of these four grievances, it may be necessary for the hearing to extend longer than one day. The hearing officer should allow both parties a full and fair opportunity to present their cases. The length of the hearing is left to the discretion of the hearing officer.

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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June M. Foy  
EDR Consultant, Sr.

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<sup>1</sup>*Grievance Procedure Manual*, §8.5.

<sup>2</sup> Va. Code § 2.2-1001 (5).

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