

Issue: Compliance/grievant alleges that grievance is duplicative of previous grievance;
Ruling Date: June 27, 2006; Ruling #2006-1319; Agency: Department of Juvenile
Justice; Outcome: grievance is not duplicative and may proceed



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
No. 2006-1319
June 27, 2006

The grievant has requested a compliance ruling from this Department. The grievant asserts that the Department of Juvenile Justice (DJJ or the agency) improperly closed his March 13, 2006 grievance on the basis that it was duplicative of a previous grievance.¹ For the reasons set forth below, this Department finds that the March 13th grievance is not duplicative and may proceed.

FACTS

On January 26, 2005, the grievant received a Group II Written Notice with suspension, which he challenged by initiating a grievance on February 24, 2006.² On March 13, 2006, the grievant initiated another grievance challenging statements allegedly made by management during the resolution steps for the February 24th grievance, regarding the grievant's having been previously counseled during his annual evaluation. In an attachment to his March 13th grievance, the grievant states that he "grieve[s] having just been informed of this alleged counseling."³ He also contends that he "was never counseled or advised of [his] right to grieve these unsubstantiated [sic], alleged remarks or statements,"⁴ and he challenges the basis and content of the alleged counseling.

¹ Although the grievant signed and dated the Grievance Form A on March 12, 2006, the document was apparently not submitted to the agency until March 13, 2006.

² This grievance was signed and dated by the grievant on February 16, 2006, but it appears not to have been received by the agency until February 24, 2006.

³ In his "Request for [a] Positive Compliance Ruling," the grievant notes that the January 26th Written Notice also referred to this alleged counseling. The Written Notice states, in relevant part, "[Grievant] was given the expectations orally in a counseling session for his EWP and in writing regarding his EWP on 10/7/05 & 1/6/06 (To seek assistance from supervisor or designee when he does not understand or gets stuck in a process pertaining to core responsibilities and to complete all assigned duties within the allotted time frames and respond to inquires [sic] in a timely fashion)."

⁴ According to the grievant's representative, the grievant was allegedly told by his supervisor that he could not initiate a grievance regarding his 2005 evaluation.

On March 14, 2006, the first-step respondent advised the grievant that the agency considered his March 13th grievance to be duplicative of his February 24th grievance. On March 22, 2006, the grievant requested a compliance ruling from this Department.

DISCUSSION

The grievance procedure states that a grievance may “not duplicate another grievance challenging the same action or rising out of the same facts.”⁵ While we agree with the agency that the grievances are significantly intertwined, we find that the grievances do not challenge the same action. The February 24th grievance challenges the January 26th disciplinary action taken against the grievant. In contrast, the March 13th grievance challenges management’s alleged assertion that the grievant had previously been counseled during his annual evaluation,⁶ as well as the merits of the underlying counseling itself. While the actions challenged by the grievances are clearly related, these are nevertheless separate management actions, which the grievant was free to challenge through separate grievances.⁷

We note, however, that this ruling only determines that the grievant’s March 13th grievance is not duplicative of his February 24th grievance. To the extent the agency believes the grievant has failed to comply with the grievance procedure in some other manner (for example, if the agency believes claims raised in the grievance are untimely), it may still raise any such objections.

Further, while we do not believe it would be advisable to adopt a blanket rule precluding the use of the grievance process to challenge management conduct occurring during the resolution steps,⁸ we strongly caution that as a general rule, the non-compliance procedure set forth in § 6.3 of the *Grievance Procedure Manual*—not the initiation of a new grievance—is the proper means for an employee to address concerns regarding such conduct. Indeed, the initiation of a grievance challenging management conduct during the resolution steps may, in many instances, be properly viewed by an agency as harassment, although we find no evidence of such an improper intent here.⁹ We also caution that under current EDR precedent, it is extremely unlikely that in any but the most egregious

⁵ *Grievance Procedure Manual* § 2.4.

⁶ Although the grievant does not apparently dispute that he received some criticism of his performance in connection with this 2005 evaluation, he contends that these criticisms do not constitute a “counseling.”

⁷ See, e.g., EDR Ruling No. 2004-748. However, to the extent the grievant seeks to challenge the use of the alleged counseling as a basis for the January 26th Written Notice, such claims would be duplicative of his February 24th grievance and may be excluded from consideration during the management resolution steps of the March 13th grievance, at the agency’s discretion.

⁸ For example, such a rule would have the undesirable consequence of preventing an employee from challenging, through the grievance procedure, the use of physical intimidation or a racial epithet during a second-step meeting.

⁹ See *Grievance Procedure Manual* § 2.4 (“An employee’s grievance must: . . . 4. Not be used to **harass** or otherwise impede the efficient operations of government. . . .”)

circumstances—not present in this case—would a grievance challenging management conduct during the resolution steps be qualified for hearing.¹⁰

CONCLUSION

For the reasons set forth above, the March 13th grievance is not duplicative of his February 24th grievance and the grievant may continue to advance his grievance through the management resolution steps. By copy of this ruling, the grievant and the agency are advised that the grievant has 5 workdays from receipt of this letter to either conclude the grievance or request to advance it to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.¹¹

Claudia T. Farr
Director

¹⁰ Although the grievant's claims relating to the resolution steps would almost certainly not qualify under EDR's current precedent, in deciding the claims raised in the grievant's February 24th grievance (which has apparently been qualified for hearing by the agency), a hearing officer could, in his or her discretion, allow as background any evidence relating to the claims raised in the March 13th grievance.

¹¹ Va. Code §2.2-1001(5).