

Issue: Compliance – Grievance Procedure: Request for Documents; Ruling  
Date: October 12, 2007; Ruling #2008-1819; Agency: Department of Juvenile  
Justice; Outcome: Agency In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Juvenile Justice  
Ruling No. 2008-1819  
October 12, 2007

The grievant has asked for a compliance ruling from this Department. He alleges that the Department of Juvenile Justice (the agency) failed to comply with the grievance procedure by not providing requested documents.

FACTS

On June 26, 2007, the grievant initiated a grievance challenging his suspension pending the agency's investigation into his alleged misconduct. Pursuant to that grievance, in a letter dated July 25, 2007, the grievant requested that the agency provide "all documentation used to support the offenses cited on four written notices issued to me on July 20, 2007." On August 1, 2007, the grievant provided a notice of noncompliance to the agency head, which stated that the agency was "out of compliance with Section 3" of the grievance procedure. Included with the notice was a more detailed letter, originally sent to this Department on July 26, 2007, that specified the agency's alleged noncompliance in this regard. Although the more detailed July 26, 2007 letter did not clearly identify as an issue of noncompliance the agency's failure to provide documents pursuant to the grievant's July 25, 2007 request, the matter was mentioned. The grievant has not yet received any documents in response to his request.

After the agency issued the Written Notices to the grievant following the completion of its internal investigation, the grievant initiated a grievance on August 8, 2007 to challenge the disciplinary actions. While that second grievance was pending, the grievant was granted relief by the agency pursuant to his June 26, 2007 grievance. As such, the grievant concluded the June 26, 2007 grievance. After the conclusion of his first grievance, the grievant now requests a compliance ruling by this Department regarding the agency's alleged noncompliance in not responding to the July 25, 2007 request for documents.

### DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.<sup>3</sup>

In this case, the grievant's request for a compliance ruling is premature. The original July 25, 2007 document request was made pursuant to the grievant's June 26, 2007 grievance, which has since been concluded. The grievant's subsequent August 8, 2007 grievance, which is still active, had not been initiated at the time of the document request or the August 1, 2007 notice of noncompliance. As such, because the grievant made no further action to renew it, the request for documents was only effective for the concluded June 26, 2007 grievance. The September 18, 2007 letter requesting a compliance ruling to this Department, which was copied to the agency head, should now put the agency on notice that the grievant has renewed his July 25, 2007 request for documents as part of the active August 8, 2007 grievance. However, the agency was not provided the requisite time to respond to this renewed document request before the grievant sought a ruling from this Department. This ruling request is, therefore, premature.

As a general rule, a party may raise a claim of noncompliance at any point in the grievance process.<sup>4</sup> However, because the active August 8, 2007 grievance has already been qualified for hearing and a request for the appointment of a hearing officer has been submitted to this Department, the grievant may address any remaining issues regarding document production with the hearing officer.<sup>5</sup>

This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> *Grievance Procedure Manual* § 6.

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Va. Code § 2.2-3003(G).