

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 6, 2009; Ruling #2009-2232; Agency: Department of Correctional Education; Outcome: Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Correctional Education
Ruling No. 2009-2232
March 6, 2009

The grievant has requested a compliance ruling regarding the administrative closure of her January 23, 2009 grievance by the Department of Correctional Education (the agency). For the reasons set forth below, the agency's closure of the grievance was improper and the grievance must be permitted to proceed.

FACTS

The grievant initiated her January 23, 2009 grievance with her supervisor's supervisor, an Assistant Superintendent and second step-respondent. According to the grievant, the second step-respondent contacted her and they had planned to meet when the grievant came to the agency to sign her retirement papers. The grievant asserts she went to the agency on two separate occasions concerning the retirement papers and was unable to find the second step-respondent to meet. Conversely, the agency states that the second step-respondent has made attempts to set a date for a meeting, but the grievant failed to contact him. The grievant sent a notice of noncompliance letter to the agency head on February 11, 2009. The agency responded in a February 12, 2009 letter asserting that because the grievant had agreed to retire, the grievance issues were moot and the grievance was administratively closed. The grievant now seeks a compliance ruling.

DISCUSSION

The grievance procedure provides an agency limited opportunities to close an employee's grievance unilaterally as the agency did in this case. If an agency asserts that a grievant did not comply with the requirements for initiating a grievance, or that a grievant does not have access to the grievance procedure, the agency may administratively close a grievance, with opportunity for the employee to appeal to EDR.¹ However, in this case, neither of these situations is at issue here. Instead, the agency closed the grievance based on its position that the issues challenged by the grievance were moot.

¹ *Grievance Procedure Manual* §§ 2.3, 2.4. An agency may also seek to close a grievance for noncompliance, but not before requesting a ruling from this Department. *Grievance Procedure Manual* § 6.3; *Frequently Asked Grievance Questions*, FAQ # 29, at <http://www.edr.virginia.gov/faqs.htm>.

The grievance procedure does not allow an agency to close a grievance on the basis that, in its judgment, the grievance issues are “moot.” It would appear that the agency believes the January 23, 2009 grievance is moot because the grievant has decided to retire. However, the *Grievance Procedure Manual* only requires that an employee have been “employed by the Commonwealth *at the time the grievance is initiated.*”² If a grievant with access to the grievance procedure initiates a timely grievance and at some point later decides to leave the agency, whether by resignation or retirement for instance, the grievant still has the right to proceed with that grievance.³ Such is the case here, as it appears the grievant was still an agency employee when she initiated her grievance and did not decide to accept retirement until a later date. Further, it does not appear that the grievant agreed to close the grievance. As such, the agency’s decision to close the January 23, 2009 grievance unilaterally was improper and ineffective.

The January 23, 2009 grievance must be permitted to proceed. **Within five workdays of receipt of this ruling**, the agency must contact the grievant to schedule the second step meeting⁴ and proceed with the grievance process. This ruling does not determine that either the agency or the grievant have been noncompliant in failing to schedule and hold the second step meeting. It appears both parties have made attempts to have a meeting, but it has not yet occurred. Therefore, consistent with this ruling, both the grievant and the agency must make reasonable efforts to schedule and hold the required second step meeting.

This Department’s rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

² *Grievance Procedure Manual* § 2.3 (emphasis added).

³ See, e.g., EDR Ruling No. 2008-1951; EDR Ruling No. 2001-060.

⁴ See *Grievance Procedure Manual* § 3.2.

⁵ See Va. Code § 2.2-1001(5), 2.2-3003(G).