

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: May 7, 2010;
Ruling #2010-2614, 2010-2615; Agency: Department of Social Services; Outcome:
Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Social Services
Ruling Nos. 2010-2614, 2010-2615
May 7, 2010

The grievants have requested reconsideration of EDR Ruling Nos. 2010-2497, 2010-2498 (“prior ruling”), which addressed allegations of the Department of Social Services’ (the agency’s) noncompliance with the grievance procedure in not providing requested documents. One portion of the prior ruling states:

*The grievants assert that they received no documents regarding a proposed, but aborted, merger of their former division and a similar division of another agency. However, documents about this merger, to the extent they exist, do not appear to be material to the claims at issue in this grievance. Such documents need not be produced under the grievance procedure.*¹

The grievants request clarification about whether this language in the prior ruling eliminates and/or prevents them from raising arguments about the proposed merger. The short answer to that question is no. The grievants are free to assert these arguments in their grievances. This ruling and the prior ruling are not meant to prevent the grievants from presenting evidence, including testimony, about this proposed merger and its relation to their claims. Indeed, it appears the grievants already have knowledge and evidence about this process.

The prior ruling is still correct in that there does not appear to be sufficient materiality to require the agency to produce all documents about a management action (the proposed merger) that is not the subject of the grievances. However, upon further consideration of the grievants’ arguments, further refinements to this analysis must be made.

Evidence is generally considered relevant when it would tend to prove or disprove a fact in issue.² A fact in issue in this case is the grievants’ argument that the elimination of their

¹ EDR Ruling Nos. 2010-2497, 2010-2498.

² See *Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 138, 413 S.E.2d 630, 636 (1992) (“We have recently defined as relevant ‘every fact, however remote or insignificant that tends to establish the probability or improbability of a fact in issue.’” (citations omitted)); *Morris v. Commonwealth*, 14 Va. App. 283, 286, 416 S.E.2d

positions was the last act in a series of attempts by upper management to undermine and/or eliminate the agency's audit function and/or the grievants themselves. As such, if there is evidence that the proposed merger was to be used to eliminate the grievants' positions, that evidence could be relevant to these grievances. That such documents may be related to a management action that is not challenged as part of these grievances (the proposed merger) should not prevent the documents from being produced. Therefore, to the extent there are documents showing the agency's attempts to use the proposed merger to eliminate the grievants' positions or dilute the audit function, such documents must be provided to the grievants.

In addition, the grievants state that members of agency management during this proposed merger process made statements about alleged "problems" with the grievants and that allegedly "slandered" them and/or their former department. To the extent that the agency has documents that reflect such statements of disapproval of the grievants and/or their former department, they could be relevant to the grievants' arguments about the agency's intent and purpose of eliminating their positions. As such, these documents, to the extent they exist, must be produced as well.³

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

462, 463 (1992) ("Evidence is relevant in the trial of a case if it has any tendency to establish a fact which is properly at issue." (citations omitted)).

³ The documents addressed in this ruling can be produced as part of the new search for records that is being conducted as a result of the prior ruling. It is this Department's understanding that the new search process is currently on hold pending resolution of compliance issues to be addressed in a forthcoming EDR Ruling. As such, the documents need not be produced until completion of that ruling and resolution of issues addressed therein.

⁴ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).