

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: July 2, 2010;  
Ruling #2010-2666; Agency: Department of Behavioral Health and Developmental  
Services; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF THE DIRECTOR**

In the matter of Department of Behavioral Health and Developmental Services  
Ruling No. 2010-2666  
July 2, 2010

The grievant has requested a ruling on whether his May 14, 2010 grievances with the Department of Behavioral Health and Developmental Services (the agency) are in compliance with the grievance procedure. The agency asserts that the grievant did not meet the rules for initiating a grievance because the grievant initiated a similar complaint with the Office of Equal Employment Services (OEES) at the Department of Human Resource Management (DHRM). For the reasons set forth below, this Department determines that the grievances are not currently in compliance with the grievance procedure, but may be cured.

FACTS

In his May 14, 2010 grievances,<sup>1</sup> the grievant has raised various arguments to challenge his receipt of Written Notices and his resulting termination, which took effect on April 13, 2010. On April 13, 2010, prior to submitting these grievances, the grievant had also initiated a discrimination complaint with OEES regarding his termination. Because the grievant initiated an OEES complaint, the agency argues that the grievances are noncompliant with Section 2.4 of the *Grievance Procedure Manual* and closed the grievances. The grievant now requests a compliance ruling.

DISCUSSION

To satisfy Section 2.4 of the *Grievance Procedure Manual*, a grievance must “[n]ot have been pursued through another state process (for example, a formal discrimination complaint filed with the [OEES]).”<sup>2</sup> Pursuant to this Department’s Memorandum of Understanding with DHRM, an employee may not use the OEES complaint process and the grievance procedure to address “the same work-related action.” Consequently, the management actions raised in the OEES complaint on April 13, 2010, i.e., the grievant’s termination,<sup>3</sup> are currently the domain of

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<sup>1</sup> It appears the grievant submitted separate Grievance Form A’s to challenge each Written Notice.

<sup>2</sup> *Grievance Procedure Manual* § 2.4; see also *id.* § 1.3 (“An employee may not pursue both an OEES complaint and a grievance on the same matter.”).

<sup>3</sup> Although the grievant contends he did not intend to challenge his receipt of any Written Notices in his OEES complaint, that complaint clearly lists his termination as the act of discrimination challenged. The Written Notices

OEES to investigate and address. However, under the Memorandum of Understanding, the grievant may pursue these grievances if he requests termination of his OEES complaint prior to OEES's final determination regarding the complaint. Therefore, in the interests of expediency, the grievant is ordered to make such an election **within 10 work days from the date of this ruling**. If the grievant wishes to pursue his grievance(s), he must withdraw the OEES complaint within this timeframe. For more information, the parties are encouraged to contact EDR's AdviceLine at 1-888-232-3842.

### CONCLUSION

For the reasons discussed above, this Department has determined that the grievances dated May 14, 2010 do not currently comply with Section 2.4 of the *Grievance Procedure Manual*. Should the grievant withdraw his OEES complaint within the timeframe established above and prior to OEES's final determination regarding the complaint, he may re-submit these grievances within 30 calendar days of his withdrawal of the OEES complaint.<sup>4</sup> This Department's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

It should be noted that OEES has stayed its investigation into the grievant's complaint pending the outcome of this ruling. Now that this ruling has been issued, OEES may elect to proceed with its investigation if it so chooses. As such, if the grievant wants to withdraw his OEES complaint in favor of resubmitting his grievances, he delays at his own peril should OEES make a final determination before he withdraws.

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Claudia T. Farr  
Director

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effectuated the grievant's termination. Therefore, we cannot divorce the disciplinary actions from his termination. A challenge to the termination is coextensive with a challenge to the Written Notices.

<sup>4</sup> This is consistent with the Memorandum of Understanding which provides that the grievance must be initiated within 30 calendar days of the termination of the OEES complaint. We note also that the re-submitted grievances may not expand on those management actions already challenged in the OEES complaint. Therefore, at this point, it would appear that the grievance would be limited to the Written Notices and the grievant's termination, including any theories, including discrimination, as to why those management actions were allegedly improper.

<sup>5</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).