

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: June 24, 2011;
Ruling No. 2011-3014; 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 Department of Correctional Education
Ruling Number 2011-3014
June 24, 2011

The Department of Correctional Education (the agency) has requested to rescind qualification of the grievant's May 16, 2011 grievance. Although the agency head's designee qualified the grievance for a hearing, the agency now seeks to change that determination. For the reasons discussed below, the agency's request is denied.

FACTS

On May 23, 2011, the agency head's designee qualified the grievant's May 16, 2011 grievance for a hearing. That determination was sent to the grievant, who responded on or about May 31, 2011, indicating that she wished to advance the grievance to hearing. In the agency's June 6, 2011 request to this Department, it has asked to rescind its qualification of the grievance based in large part on its review of a recent hearing decision it received on May 20, 2011 in another employee's grievance.

DISCUSSION

This Department recognizes that the Grievance Form A is an official grievance document used by the parties to communicate throughout the grievance process and as such, is of paramount importance during the grievance procedure. Because the grievant, agencies, and this Department rely on the Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly and accurately express their intentions on the Grievance Form A. In EDR Ruling No. 2004-611 and EDR Ruling No. 2004-696, this Department essentially ruled that a party's notations on the Grievance Form A, even if mistaken, could not be altered. However, since that time, this Department has considered errors made on the Grievance Form A in different contexts and in so doing has recognized that evidence of a party's intent is relevant.¹

Unlike the recent decision in EDR Ruling No. 2011-2970, the agency in this case does not state, nor does the evidence show, that it mistakenly checked the wrong box on the Form A,

¹ See EDR Ruling No. 2011-2970, and rulings cited therein.

thus erroneously indicating it wished to qualify the May 16, 2011 grievance. Rather, after reviewing the hearing decision in another employee's grievance, the agency here simply reassessed its initial decision to qualify this grievance. Because on May 23, 2011 the agency originally intended to qualify the grievance for a hearing, it is not permissible to now change that determination.

While this Department has permitted parties to correct unintended mistakes on the Grievance Form A, parties will not be allowed to change clearly intended choices (like a grievant's closure of a grievance or an agency's qualification of a grievance for hearing) simply because the party changes its mind later. There must be finality to determinations intentionally made and indicated by parties on the Grievance Form A. Further, the procedural approach to finality must be consistent with respect to both parties. If agencies were allowed to rescind their intentional decisions to qualify a grievance for hearing, should grievants also be allowed to rescind their intentional decisions to conclude their grievances? If so, by what deadline should the parties be allowed to change their minds? In the interests of procedural order, stability, and finality, rescission of either party's deliberate, intended decision to conclude a grievance (in the case of a grievant) or to qualify a grievance (in the case of an agency) cannot be permitted, and the agency's request in this case must be denied.

CONCLUSION

Having already qualified the May 16, 2011 grievance for a hearing, within five workdays of receipt of this ruling, the agency shall request the appointment of a hearing officer using the Grievance Form B. This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

² See Va. Code §§ 2.2-1001(5), 2.2-3003(G).