

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: August 12, 2011;  
Ruling No. 2012-3057, 2012-3059; Agency: Department of Correctional Education;  
Outcome: Agency In Compliance, Hearing Officer in Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Correctional Education  
Ruling Numbers 2012-3057, 2012-3059  
August 12, 2011

The grievant has submitted two additional compliance ruling requests to this Department (EDR) in Case No. 9657. For the reasons discussed below, this Department finds no merit in the grievant's ruling requests.

*Burden of Proof*

The grievant has asked that this Department review the hearing officer's determination during the pre-hearing conference that the burden of proof is on the grievant in her grievance. The party who has the burden of proof is not determined by whether the grievance involves an "adverse action," as appears to be argued by the grievant.<sup>1</sup> Rather, as stated in the *Grievance Procedure Manual*, while an agency has the burden of proof for disciplinary actions or dismissals for unsatisfactory performance, the grievant has the burden of proof in all other cases.<sup>2</sup> The grievant's grievance does not involve a disciplinary action or a dismissal for unsatisfactory performance. As such, the hearing officer correctly determined that the grievant bears the burden of proof in this case. The grievant's argument otherwise is baseless.

*Agency Advocate*

The grievant has requested a compliance ruling regarding the agency designating a new advocate for the grievance hearing. Importantly, once a grievance has been qualified for a hearing, any claims of noncompliance are to be raised with the hearing officer.<sup>3</sup> If a party disagrees with the manner in which the hearing officer addresses the noncompliance, a ruling request can then be submitted to EDR.<sup>4</sup> Because there is no indication in her ruling request that

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<sup>1</sup> While there is no verbatim record of the pre-hearing conference, as stated in the hearing officer's August 10, 2011 letter to the parties, the determination that the grievant has the burden of proof was not based on a question of an "adverse action." This appears to be an issue the grievant has injected without understandable cause. The question of the burden of proof is clearly and unambiguously addressed by the *Grievance Procedure Manual*. See *infra*. The citations in the grievant's August 10, 2011 e-mail are inapposite.

<sup>2</sup> *Grievance Procedure Manual* § 5.8; see also *Rules for Conducting Grievance Hearings* § IV(C).

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

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

the grievant raised this matter with the hearing officer prior to requesting a compliance ruling, her request is premature.

Even if the grievant's ruling request was proper, there is no basis to find any noncompliance. Absent inappropriate conduct demonstrated during the hearing phase, there is no basis to exclude a party's chosen advocate.<sup>5</sup> The grievant has presented no grounds in support of her ruling request.<sup>6</sup> Accordingly, the request is denied.

This Department's rulings on matters of compliance are final and nonappealable.<sup>7</sup> This Department is further compelled to address the fact that the grievant has submitted numerous compliance ruling requests recently, most of which have been meritless. Submission of baseless compliance ruling requests unnecessarily taxes EDR resources and could potentially be relevant in determining whether the grievance procedure is being used to harass or impede agency operations.<sup>8</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> See EDR Ruling Nos. 2011-2867, 2011-2870.

<sup>6</sup> To the extent the grievant argues she was not notified of the change by the agency, she was informed by the Division of Hearings that the change had been sent in by e-mail the previous day. This notification came prior to the pre-hearing conference. Even if it is true that the agency did not provide the grievant with notification of the change in advocate, there is no prejudice here because the grievant was actually informed of the change in a timely manner.

<sup>7</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G).

<sup>8</sup> See Va. Code § 2.2-3003(C).