

Issue: Consolidation of grievances for a single hearing; Ruling Date: September 21, 2011; Ruling No. 2012-3108, 2012-3109; Agency: Department of Juvenile Justice; Outcome: Consolidation Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice
Ruling Numbers 2012-3108, 2012-3109
September 21, 2011

This ruling addresses the consolidation for hearing of the grievant's June 3, 2011 grievance with his September 19, 2011 grievance. For the reasons discussed below, this Department finds that consolidation of these grievances into a single hearing is appropriate and practicable.

FACTS

The grievant's June 3, 2011 grievance challenges a Group I Written Notice for alleged unsatisfactory work performance. The September 19, 2011 grievance challenges the grievant's termination based on his receipt of a Group III Written Notice. The Department of Juvenile Justice (the agency) qualified the June 3, 2011 grievance for a hearing and requested the appointment of a hearing officer (Case Number 9668). Following appointment of Case Number 9668 to a hearing officer, this Department received notification of the grievant's September 19, 2011 grievance and his request to consolidate both matters for a single hearing. The September 19, 2011 grievance is proceeding through the management resolution steps and has yet to be qualified for hearing as it has just recently been initiated. The agency objects to the grievant's consolidation request.

DISCUSSION

Approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EDR may consolidate grievances for hearing without a request from either party.¹ EDR strongly favors consolidation and will consolidate grievances when they involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.²

¹ *Grievance Procedure Manual* § 8.5.

² *See id.*

This Department finds that consolidation of these two grievances for hearing is appropriate. Both grievances involve the same grievant and may share common themes, claims, and witnesses. It appears that both grievances challenge Written Notices that led to the grievant's termination. Moreover, we find that consolidation is not impracticable in this instance.

The agency objects to the consolidation and notifies EDR that it is ready to proceed to hearing in the June 3, 2011 grievance at this time. The agency also argues that consolidating these two grievances could cause confusion because the conduct underlying each Written Notice arose out of events that were closely tied. The agency argues that such a connection could lead to an unintended assumption by the hearing officer that the two separate Written Notices are one issue. While we understand the agency's concern, in this Department's view, the consolidation of these matters would not appear to lead to confusion that could not be remedied through reasonable presentation by the parties. In short, the agency's stated objection is not sufficient to override the inherent efficiencies provided by consolidation. Further, this Department does not find that any prejudice would result by the consolidation in this case.

As such, the grievant's June 3, 2011 grievance is consolidated with the new September 19, 2011 grievance for a single hearing. Appointment of a hearing officer will occur following completion of the management resolution steps, qualification of the grievance for hearing, and submission of the Form B with appropriate documentation by the agency in the September 19, 2011 grievance. The hearing officer who has been assigned the June 3, 2011 grievance will be appointed for the September 19, 2011 grievance as well. The hearing officer is ordered to stay proceedings in Case No. 9668 until appointed to the September 19, 2011 grievance for a consolidated hearing.³

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

Claudia T. Farr
Director

³ If the September 19, 2011 grievance is otherwise resolved or closed prior to hearing, the stay in Case No. 9668 would be lifted, allowing the case to proceed on the June 3, 2011 grievance alone.

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