

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: February 8, 2012; Ruling No. 2012-3261; Agency: Department of Correctional Education; Outcome: Grievant Not in Compliance.



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

**RECONSIDERED COMPLIANCE RULING OF THE DIRECTOR**

In the matter of the Department of Correctional Education  
Ruling Number 2012-3261  
February 8, 2012

In EDR Ruling Number 2012-3204, this Department addressed the grievant's request for a ruling on whether her December 7, 2011 grievance with the Department of Correctional Education (the agency) was in compliance with the grievance procedure. In that ruling, this Department determined that the grievance did not comply with Section 2.4 of the *Grievance Procedure Manual* because it supported an inference of harassment and impeded the efficient operations of government.<sup>1</sup> On February 2, 2012, the grievant submitted a list of items she asserts this Department failed to consider in EDR Ruling No. 2012-3204. Each of the topics raised by the grievant are addressed below.

- 1. The material fact that the agency threatened me with criminal prosecution, both in the present, and in the future is an "adverse employment action" that was not documented or considered your ruling.*

While we understand the grievant's perception of the letter, this Department reviewed the materials submitted and did not find where the agency had threatened the grievant with criminal prosecution. Rather, the grieved letter indicated that the Office of the Attorney General had no interest in prosecuting any even alleged violation. There was no adverse employment action here.

- 2. The material fact that the agency had no written policy at that time, and does not have one to date, regarding their directive to me was neither documented or considered in your ruling.*

Whether the agency has a written policy regarding the use of names of incarcerated youth in presentations was not relevant to this Department's determination of the grievant's noncompliance with Section 2.4 of the *Grievance Procedure Manual*. Further, the agency does not need to have a specific written policy to direct the performance of each facet of its employees' performance. While we agree with the grievant that the agency might consider

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<sup>1</sup> EDR Ruling No. 2012-3204.

developing such a policy in the future to guide employees, such a policy was not required to direct the grievant to remove the names from her presentation.

3. *The material fact that the agency did not, nor has to date required the directive issued to me, for which they intended to prosecute me criminally, be complied with by any other employee in the agency was neither documented or considered by your ruling.*

Whether the agency has required other employees to follow the same directive given to the grievant was not relevant to this Department's determination of the grievant's noncompliance with Section 2.4 of the *Grievance Procedure Manual*. Even if EDR were to assume that this was only a singular directive as to the grievant's specific presentation, given the totality of circumstances discussed in Ruling No. 2012-3204 and this ruling, the analysis of EDR Ruling No. 2012-3204 would not be altered. Were the grievant ever disciplined for a violation of this directive, she would be free to raise any inconsistency in discipline in a grievance challenging such discipline.

4. *You operated outside of her legal authority and in an extremely unethical manner by denying me the right to appeal this ruling as I am entitled to do under the Grievance Policy guidelines in an effort to avoid the possibility that a bias, unfounded, and legally unsound ruling would be overturned.*

The EDR Director has the legal authority to rule on all matters of procedural compliance with the grievance procedure. Such rulings are final with no opportunity for appeal consistent with the Code of Virginia and the *Grievance Procedure Manual*.<sup>2</sup>

5. *The material fact that the agency imposed a Department of Juvenile Justice policy involving medical records regarding myself, a Department of Correctional Education employee that manages academic records, was not documented or considered by your ruling.*

Whether Virginia Code § 16.1-300, referenced by the agency in the grieved letter, is applicable to the grievant's presentation was not relevant to this Department's determination of the grievant's noncompliance with Section 2.4 of the *Grievance Procedure Manual*. The agency would not need statutory support to direct the grievant to remove the names from her presentation.

6. *The fact that, in previous rulings, I was directed to request a ruling from her office by the Hearing Officer regarding various matters, and as a result, complied with that request, was neither documented, nor considered in your ruling.*

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<sup>2</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G); *Grievance Procedure Manual* §§ 2.4, 6.1, 6.2.

Even assuming the grievant's assertion is accurate, the analysis of EDR Ruling No. 2012-3204 is not affected. This assertion does not change the fact that the grievant has a history of raising meritless issues during the grievance process.

*7. The fact that I requested a meeting and clarification regarding what constitutes "instructional tools" and how I was to implement a directive that could not be explained by my superiors or implemented by them, but never even received a response from [agency manager] regarding this, was also not documented or considered during the review of this ruling.*

Whether the agency has responded to the grievant's request for a meeting and/or clarification was not relevant to this Department's determination of the grievant's noncompliance with Section 2.4 of the *Grievance Procedure Manual*. The agency's alleged failure in this regard was not an issue raised in the grievant's December 7, 2011 grievance.

Based on the foregoing, the grievant has presented no basis for this Department to alter EDR Ruling No. 2012-3204. This Department's rulings on matters of compliance are final and nonappealable.<sup>3</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).