

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: May 22, 2012;  
Ruling No. 2012-3356; Agency: Department of Behavioral Health and Developmental  
Services; Outcome: No Ruling – premature.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Behavioral Health & Developmental Services  
Ruling Number 2012-3356  
May 22, 2012

The grievant, by her representative, appears to have sought a compliance ruling concerning her grievance with the Department of Behavioral Health and Developmental Services (the agency) due to the agency's alleged noncompliance in producing requested documents. For the following reasons, this matter is premature for determination by this Department.

According to the grievant's representative, the grievant requested documents from the agency, was denied access to those documents, and has asked for reconsideration of that request. The agency has apparently not yet responded to the reconsideration request. However, the grievant did not request that this Department issue a compliance ruling until after the grievance had been qualified for a hearing, submitted for appointment of a hearing officer, and appointed to a hearing officer.

Because the grievance has been qualified for hearing and appointed to a hearing officer, any claims of noncompliance are to be raised with the hearing officer first.<sup>1</sup> Because there is no indication in the ruling request that the grievant raised this matter with the hearing officer prior to requesting a compliance ruling, the ruling request regarding production of documents is not ripe for determination by this Department.<sup>2</sup> If the grievant disagrees with the hearing officer's decision or order, an objection should be made to the hearing officer, and a ruling from EDR must be requested in writing.<sup>3</sup>

This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> *Grievance Procedure Manual* § 6.3. The grievant must request that the hearing officer order production of documents still being sought. *See Rules for Conducting Grievance Hearings* § III(E); *see also* § V(B) (allowing a hearing officer to impose an adverse inference against a party failing to produce documents).

<sup>2</sup> *See Grievance Procedure Manual* § 6.3.

<sup>3</sup> *Id.* EDR can address such matters in an interlocutory ruling.

<sup>4</sup> *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).