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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2026-5945
September 2, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management in relation to alleged noncompliance by the hearing officer in Case Number 12301. These questions arise on remand following the issuance of EDR Ruling Number 2026-5934, which remanded the matter to the hearing officer for further proceedings. The Department of Behavioral Health and Developmental Services (the “agency”) has sought to present three identified witnesses to which the grievant has objected. The hearing officer entertained the grievant’s objections but elected to issue witness orders for the agency’s witnesses over those objections. The grievant asserts that the agency’s witnesses have no knowledge of the 2023 incident that will be the primary subject of matters on remand. Thus, the grievant argues that these witnesses have no relevance to the proceeding and should not be permitted to testify. As such, the grievant seeks this ruling to address these objections.

A hearing officer has the authority to issue witness orders.¹ However, EDR has the authority to review and render final decisions on issues of hearing officer compliance with the grievance procedure. As long as a hearing officer’s orders are consistent with the witness testimony provisions of the grievance procedure, the determination of what witnesses are ordered to appear at the hearing is within the hearing officer’s discretion.² For example, a hearing officer has the authority to exclude irrelevant or immaterial evidence.³

EDR has reviewed the grievant’s objections and finds no error with the hearing officer issuing the witness orders for the agency’s witnesses. As identified in EDR Ruling Number 2026-5934, the agency has the opportunity to present rebuttal evidence. While such evidence might take the form of witness testimony about the particulars of the 2023 incident, it most certainly should include testimony about the relative comparability of that incident to the one for which the grievant

¹ Va. Code § 2.2-3005(C)(3); *Rules for Conducting Grievance Hearings* § III(E).

² See, e.g., EDR Ruling No. 2012-3053.

³ See Va. Code § 2.2-3005(C)(5). Evidence is generally considered relevant when it would tend to prove or disprove a fact in issue. See *Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 138, 413 S.E.2d 630, 636 (1992) (“We have recently defined as relevant ‘every fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue.’” (citation and internal quotation marks omitted)); *Morris v. Commonwealth*, 14 Va. App. 283, 286, 416 S.E.2d 462, 463 (1992) (“Evidence is relevant in the trial of a case if it has any tendency to establish a fact which is properly at issue.” (citation omitted)).

was disciplined, management's perspective on the assertion that there has been inconsistent discipline, or any changes in management or management's views on these issues since the 2023 incident, for example. The witnesses chosen by the agency would appear able to speak to these and potentially other related issues. Consequently, EDR concurs with the hearing officer that the agency should be permitted to present these witnesses.⁴

EDR's rulings on matters of compliance are final and nonappealable.⁵

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⁴ To the extent the grievant argues that any of the agency's proposed witnesses were not on the agency's original witness list, that does not prevent the hearing officer from receiving them as witnesses. Indeed, the process of rebuttal evidence is that a party may present evidence that was not previously identified.

⁵ *Id.* §§ 2.2-1202.1(5), 2.2-3003(G).