

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 17, 2017;  
Ruling No. 2017-4546; Agency: Department of Corrections; Outcome: Grievant Not  
in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2017-4546  
May 17, 2017

The Department of Corrections (the agency) has requested a compliance ruling related to the grievant's March 10 and March 15, 2016 grievances. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievances.

FACTS

On or about March 10, 2016, the grievant initiated two grievances with the agency. On March 15, 2016, the grievant initiated a third grievance. After proceeding through the management resolution steps, on September 7, 2016, the agency head denied qualification of the two March 10, 2016 grievances. The March 15, 2016 grievance advanced to the third resolution step, whereupon the third step-respondent issued a response on August 2,

Having not received a response from the grievance regarding any of the three grievances, on September 30, 2017, the agency sent a letter of noncompliance to the grievant, via U.S. Mail. This letter indicated that the agency had not received a response from the grievant and requested a response from her within five workdays upon receipt of the noncompliance letter. On May 11, 2017, not having received a reply from the grievant, the agency requested a compliance ruling from EDR allowing it to close the three grievances.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See id.*

the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.<sup>3</sup>

In this case, the grievant appears to have failed to advance or conclude her grievances within five workdays of receiving the agency's qualification determinations in the March 10 grievances and the third resolution step response in the March 15 grievance as required by the grievance procedure.<sup>4</sup> Moreover, the agency notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievances.

As the grievant has apparently failed to advance or conclude her grievances in a timely manner, she has failed to comply with the grievance procedure. The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to advance or conclude her grievances. If she does not, the agency may administratively close the grievances without any further action on its part. The grievances may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>3</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>4</sup> See *Grievance Procedure Manual* § 3.3, § 4.2.

<sup>5</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).