

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: May 18, 2017;  
Ruling No. 2017-4553; Agency: Department of Juvenile Justice; Outcome: Grievant  
Not in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution<sup>1</sup>**

**COMPLIANCE RULING**

In the matter of the Department of Juvenile Justice  
Ruling Number 2017-4553  
May 18, 2017

The Department of Juvenile Justice (the agency) has requested a compliance ruling related to the grievant's October 21, 2016 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about October 21, 2016, the grievant initiated a grievance with the agency. The agency states that on December 27, 2016, the second step response was sent to the grievant, though it is unclear how the response was sent.<sup>2</sup> Having apparently received no response from the grievant, on or about February 7, 2017, the agency sent, by certified mail, a letter of noncompliance to the grievant, indicating that the grievance would be closed if he did not respond by February 28. The letter was apparently received on February 18, 2017. On May 10, 2017, having received no response from the grievant, the agency requested a compliance ruling from EDR regarding the October 21, 2016 grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</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>4</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> Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as "EDR" in this ruling to alleviate any confusion. EDR's role with regard to the grievance procedure remains the same post-merger.

<sup>2</sup> Although the agency states that the second step response was sent on December 27, 2016, the second step-respondent indicated on the grievance form that the response was completed on November 23, 2016.

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

<sup>4</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>5</sup>

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's second resolution step response, as required by the grievance procedure.<sup>6</sup> Moreover, the agency notified the grievant of his noncompliance and he has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or proceed to the third step. If he does not, the agency may administratively close the grievance without any further action on its part. The grievance 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>7</sup>



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<sup>5</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>6</sup> See *Grievance Procedure Manual* § 3.2.

<sup>7</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).