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COMPLIANCE RULING

In the matter of Norfolk State University
Ruling Number 2022-5397
April 22, 2022

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s March 7, 2022 grievance. The grievant alleges that Norfolk State University (the “agency”) has failed to comply with the time limits set forth in the grievance procedure for providing the first step response.

FACTS

On or about March 7, 2022, the grievant states that she initiated a grievance with the agency regarding her receipt of a “disciplinary action form” on February 18, 2022. She alleged that she followed up with her supervisor on or about March 16, 2022 after not receiving his response. On or about March 21, 2022, the grievant states that she reached out to the Associate Vice President for a response to her grievance. To date, the grievant alleged that she never received a response from the agency or respondents. By email dated April 6, 2022, the grievant requested a compliance ruling from EDR.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ 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.² 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 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

¹ *Grievance Procedure Manual* § 6.1.

² *See id.*

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.³

In this case, the grievant's request for a compliance ruling appears to be premature because she has not shown that she first notified the agency head (President of the University) in writing of the alleged procedural violation. Based on a review of the information submitted, however, it is evident that more than five workdays have elapsed since the grievant provided the agency with her grievance.⁴ It should be noted that the grievant alleged that she has submitted other grievances in the past and that she has not received any response. In the interest of expeditiously resolving the issues raised in this grievance, the agency is ordered to correct its noncompliance **within ten work days of the date of this ruling** by providing the grievant with a written first step response to the March 7, 2022 grievance.

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

Christopher M. Grab
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³ 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.

⁴ Although the agency head has not received the grievant's notice of noncompliance, EDR has notified the agency that the grievant has requested a compliance ruling.

⁵ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).