



JANET L. LAWSON  
DIRECTOR

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

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219

Tel: (804) 225-2131  
(TTY) 711

## COMPLIANCE RULING

In the matter of Norfolk State University  
Ruling Number 2023-5550  
May 25, 2023

This ruling addresses whether Norfolk State University (the “agency” or “university”) has failed to respond to a grievance allegedly submitted on or about March 31, 2023 by the grievant. The grievant asserts that she gave a grievance to her supervisor who “tore up the form in front of [her]” and has failed to respond to the grievance. The grievant states that she provided a letter of noncompliance to the agency head’s office about this matter, but received no response. Based on this allegation, EDR opened a compliance ruling to gather information to determine what has occurred and the next steps to resolve the matter.

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 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 the noncomplying party on any qualifiable issue. When EDR finds that either party to a grievance is in noncompliance, its 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>

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

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

<sup>3</sup> Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, 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.

The facts of this matter are less than clear. The grievant states that she submitted a grievance form on March 31, but we have been unable to confirm what the grievant submitted. The grievant was asked if she had a copy of the grievance form, but a copy does not appear to be available. The grievant stated she does not know what happened to the remains of the “torn up” grievance form. Upon investigation, the university has stated that the grievant submitted a “letter,” which was not destroyed<sup>4</sup> but rather placed in a “folder box” on a supervisor’s door. Although the university’s management has sought to receive a copy of this document from the grievant’s supervisor, the supervisor has apparently been unable to provide the document. The supervisor also appears to state that the grievant has not received any discipline or counseling and, thus, had “nothing to grieve.” Conversely, the grievant indicates that she was seeking to contest a “Performance Management Notice” dated March 15, 2023.

While a supervisor might perceive that an employee has “nothing to grieve,” the grievance procedure generally allows an employee to submit a grievance about anything related to their employment.<sup>5</sup> Consequently, even if only minor events are sought to be challenged, the university must proceed with the grievance process when a properly completed Grievance Form A is submitted timely by an employee. Performance feedback, whether written or oral, could be proper grounds for an employee to pursue a grievance. The grievance process “shall not be used to harass or otherwise impede the efficient operations of government.”<sup>6</sup> However, EDR is not aware of evidence that would substantiate such harassment and negate the requirements for the university to proceed through a grievance process.

Based on the foregoing, EDR determines that the grievant has not demonstrated that she submitted a grievance on a Grievance Form A as alleged.<sup>7</sup> For example, the university describes the grievant’s submission as a “letter” and there is no other documentation to substantiate the grievant’s statements. However, the university’s depiction of events is also dubious, in that this “letter” has not been produced by the supervisor to university management. As such, EDR finds that the best course of action is for the grievant to resubmit her grievance on a fully completed Grievance Form A to challenge what she sought to challenge in the alleged March 31, 2023 grievance. **If the grievant wishes to pursue such a grievance, she must resubmit a Grievance Form A within ten workdays of receipt of this ruling.** The grievant should submit the grievance form to the university’s human resources office to avoid any issues with her supervisor failing to respond. EDR also recommends that the grievant keep a copy of the grievance form for her records when submitting it.<sup>8</sup> For purposes of determining the timeliness of the grievance, EDR will consider the grievance to have been effectively submitted on March 31.

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<sup>4</sup> The supervisor states that he ripped up a work order at the time, not the grievant’s submission.

<sup>5</sup> See *Grievance Procedure Manual* § 2.4.

<sup>6</sup> Va. Code § 2.2-3003(C).

<sup>7</sup> “The employee bears the burden of establishing the date that the grievance was initiated. Thus, employees are strongly encouraged to document the initiation date, for instance, by using e-mail, certified mail, or requesting a date-stamped photocopy of the Grievance Form A.” *Grievance Procedure Manual* § 2.2.

<sup>8</sup> EDR acknowledges the grievant’s statement that she has had difficulties in the past with the university failing to respond to other grievances. As such, the grievant should keep a copy of any grievance form she submits in the future, and/or have the grievance date-stamped by human resources or management and keep a copy. See *Grievance Procedure Manual* § 2.2. Such copies will prevent any future dispute as to whether and when a grievance is submitted.

EDR's rulings on compliance are final and nonappealable.<sup>9</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

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<sup>9</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).