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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2022-5427
July 1, 2022

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 with the grievance procedure by the Department of Corrections (the “agency”).

FACTS

The grievant filed a grievance with the agency, dated May 14, 2022, challenging the issuance of a Group II Written Notice. The first-step respondent issued a response dated May 27, 2022, in which he declined to reduce or rescind the Written Notice. The grievant sent a notice of noncompliance to the warden of his facility and the human resources office on or about June 10, 2022, alleging that the first-step response did not comply with the grievance procedure because the step respondent did not fully address the issues raised in the grievance. The agency’s human resources office reviewed the noncompliance notice and determined that the step respondent answered the grievance “appropriately.” The grievant requested this ruling to address the noncompliance.

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 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 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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

The grievant's notice of noncompliance was apparently provided to the warden of his facility and the human resources office. Section 6.3 of the *Grievance Procedure Manual* provides that a grievant's notice of noncompliance must be made to the agency head. As the grievant has not shown that he first notified the agency head of the alleged noncompliance, this ruling request is premature. However, in the interest of resolving matters expeditiously, and in light of the fact that the agency's human resources office has already responded to the grievant's claim of noncompliance, EDR will address the grievant's claims.

In his notice of noncompliance, the grievant states that the first-step respondent did not identify certain issues raised in his grievance. EDR interprets these claims as alleged noncompliance not for failing to identify the issues, but rather for failing to provide a response to the issues. Section 3.1 of the *Grievance Procedure Manual* states that the first-step response "must address the issues and the relief requested and should notify the employee of their procedural options." While the step respondent is not required to respond to each and every point or factual assertion raised by the employee, they must generally address each issue raised and the requested relief.⁴ In this case, the grievant identified numerous issues in the attachments to the Grievance Form A, all of which relate to the agency's issuance of the Group II Written Notice. The grievant's allegations include assertions of due process violations.

Having reviewed the first-step response in the context of the particular facts surrounding this case, EDR concludes that it is adequate. The response addresses the Group II Written Notice issued to the grievant as well as the grievant's claims related thereto, if not expressly, certainly through an implicit denial in explaining the basis for the disciplinary action and providing no relief. We view the agency's issuance of the Group II Written Notice as the challenged management action in this case, which has been addressed in the first-step response. While the first-step respondent could have provided a more detailed response to each of the grievant's assertions as to why the Written Notice was not properly issued, the description of the evidence gathered and relied upon to support and justify the Written Notice has essentially responded to the claims by explaining the agency's purportedly proper basis and process for the disciplinary action. Accordingly, EDR finds that the response substantially complies with the requirements of the grievance procedure.

The grievant's ruling request submitted to EDR reiterates his claims of "severe due process violations." The grievant's claims of a denial of due process relate to how the agency issued the disciplinary action he is challenging in his grievance. Thus, the due process issues remain substantive matters to be addressed in the grievance process, potentially ultimately by a hearing officer if the grievance proceeds to that step. While the grievant may appropriately continue to

³ 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.

⁴ *E.g.*, EDR Ruling No. 2018-4718; EDR Ruling No. 2015-4155.

assert these claims, the agency's alleged denial of due process in the issuance of the Written Notice is not a matter of compliance with the grievance procedure.

Based on the foregoing, EDR finds that the agency has substantially complied with the requirements of the grievance procedure. To proceed with the grievance, the grievant must either advance the grievance to the next step or notify the agency's human resources office in writing that he wishes to conclude his grievance **within five workdays of receipt of this ruling**. EDR's rulings on matters of compliance are final and nonappealable.⁵

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