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## COMPLIANCE RULING

In the matter of the Department of Corrections  
Ruling Number 2024-5613  
September 12, 2023

The Department of Corrections (the “agency”) 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 February 27, 2023 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 the grievance.

### FACTS

On or about February 27, 2023, the grievant initiated a grievance with the agency. The agency states that the first step response was emailed to the grievant on Wednesday, April 26, 2023. Having received no further response from the grievant, the agency then sent a notice of noncompliance to the grievant via email on or about July 14, 2023. However, the notice does not appear to have been received by the grievant. As such, in EDR Ruling Number 2024-5597, issued August 2, 2023, EDR directed the grievant to “notify his human resources office in writing that he wishes to advance his grievance to the second step **within five workdays of the date of this ruling.**” Having received no further contact from the grievant, the agency notified the grievant of his noncompliance in an email on August 22, 2023. As of August 31, the grievant has not advanced or concluded his grievance, therefore the agency seeks a second compliance ruling allowing it to administratively close the grievance.

### 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 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,

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

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

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>

In this case, the grievant appears to have failed to advance or conclude the grievance within five workdays of receiving the agency's first resolution step response, as required by the grievance procedure.<sup>4</sup> Once the agency emailed the notice of noncompliance to the grievant's correct email address and to the grievant's advocate, the grievant was under a duty to either advance or conclude the grievance within five workdays, as required by the grievance procedure. It appears that the grievant has not done so.

As the grievant has ostensibly failed to advance or conclude his grievance in a timely manner for a second time, he has failed to comply with the grievance procedure. EDR 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 second resolution 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>5</sup>

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<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.

<sup>4</sup> See *Grievance Procedure Manual* § 3.1.

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