



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 the Department of Juvenile Justice  
Ruling Number 2024-5617  
September 19, 2023

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 his August 22, 2023 grievance with the Department of Juvenile Justice (“the agency”).

FACTS

On or about August 22, 2023, the grievant initiated this grievance with the agency. While the grievance identifies various alleged violations of human resources policy in the hiring, promotion, and selection of certain employees, at its core, the grievance is a challenge to the elimination of the grievant’s former position and his resulting layoff. As a portion of the grievance is related to the selection of the grievant’s former immediate supervisor, who is a Deputy Director, the agency instead offered the grievant a single management step grievance process with a different Deputy Director as the single management step respondent due to the nature of the allegations. Without apparent objection from the grievant, a meeting was held between the grievant and the Deputy Director. The grievant received the response from the Deputy Director on or about September 1, 2023. Thereafter, in a September 6 email, the grievant objected to the single step process indicated by the agency and sought to have more resolution steps, with the Chief Deputy Director and agency head serving as second and third step respondents.<sup>1</sup> The agency maintains that it is in compliance with the grievance procedure, leading the grievant to seek this compliance ruling to resolve the matter.

---

<sup>1</sup> The grievant should have objected to the single management step process proposed by the agency at the time it was explained to him by human resources. By proceeding through the step with the Deputy Director, it is reasonable to find that the grievant waived any objection to the agency’s single management step process. *See Grievance Procedure Manual* § 6.3 (“All claims of noncompliance should be raised immediately. By proceeding with the grievance after becoming aware of a procedural violation, one generally forfeits the right to challenge the noncompliance at a later time.”). However, because we find that the agency has not failed to comply with the grievance procedure for the reasons described below, we need not resolve this ruling request on the procedural technicality.

## DISCUSSION

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency's Human Resources Office and is also available on EDR's website. Each designated step respondent shall have the authority to provide the grievant with a remedy, subject to the agency head's approval.<sup>2</sup> Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step respondents. This assures that each agency's management resolution step respondents are appropriate and known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.

An agency's careful designation of step respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step respondents have an important statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step respondent and should put any agreement in writing. Absent an agreement between the parties, the agency must adhere to the designated list of step respondents. However, there are times when modification from the default steps is necessary and appropriate, such as when there are fewer layers of management in a grievant's reporting line.<sup>3</sup>

According to the agency's designated step respondents listed on the EDR website, the third step respondent is normally at the Deputy Director level.<sup>4</sup> As the grievant's immediate supervisor was also a Deputy Director, it makes sense that this grievance would begin at the Deputy Director level.<sup>5</sup> While the grievant seeks to insert other step respondents into his grievance process, the agency has not designated either the Chief Deputy Director<sup>6</sup> or the agency head as a step respondent in a grievance process arising from the grievant's position in the organization. Consequently, the combination of the steps into a single management step is the result of the grievant's high level within the agency and reporting directly to a Deputy Director. In such a situation, the steps of the grievance process collapse into a single step,<sup>7</sup> which would be handled

---

<sup>2</sup> See Va. Code § 2.2-3003(D). The grievant argues the single step respondent he met with did not have authority to override the agency head. While the single step respondent, regardless of their level, does have authority to provide relief for the matters at issue in a grievance, all relief provided in the grievance process is subject to agency head approval per the Code of Virginia. See *id.* The grievant's argument does not present a basis to find the agency's determinations noncompliant with the grievance procedure.

<sup>3</sup> See EDR Ruling No. 2013-3583. In addition, Number 16 of EDR's Grievance FAQs, which are available at <http://www.dhrm.virginia.gov/employmentdisputeresolution/grievancefaqs>, discusses this type of situation.

<sup>4</sup> The designated step respondents can be found on EDR's website at the following link: <https://www.dhrm.virginia.gov/employment-dispute-resolution/agencystepsrespondentlist>.

<sup>5</sup> The agency's transfer of the grievance to a different Deputy Director because of the nature of the allegations in the grievance was also a sensible result, to which the grievant does not appear to have objected.

<sup>6</sup> The grievant also suggests in his ruling request that the Chief Deputy Director should have been the first step respondent because of their role as the hiring authority in one of the selection processes challenged in the grievance. Section 2.4 of the *Grievance Procedure Manual* states that a grievance challenging a selection process *may* be initiated with the appointing authority or the member of management who made the selection decision. However, the selection matter of this grievance is only a portion of the grievant's claims, which largely relate to the elimination of his position and his layoff. The permissive language of Section 2.4 would not compel the result sought by the grievant to have the Chief Deputy Director serve as the first step respondent given the overall nature of the matters grieved.

<sup>7</sup> See *Grievance FAQs No. 16* ("There are only two possible respondents to my grievance in my agency. How will my grievance proceed since there are three steps in the grievance procedure?").

as the second resolution step of a grievance or like a single management step in an expedited grievance.<sup>8</sup> This is a simple and somewhat common result consistent with EDR's longstanding practices.<sup>9</sup> The agency's approach is consistent with the grievance procedure and we have no basis to find it noncompliant.

Lastly, the grievant appears to be seeking documentation from the agency reflecting the "business case" for the elimination of his former position and resulting layoff. It appears that the grievant initially sought such documentation in his grievance paperwork upon initiating the grievance. From the documentation provided with this ruling request, it is unclear what information the agency has provided the grievant in response to his request. Further, the grievant's assertion that he has not received documentation has not been refuted by the agency. However, the grievant's noncompliance notice sent on September 6, 2023, does not appear to notify the agency that they were noncompliant with failing to provide requested documentation. As such, it would be premature to find the agency noncompliant at this time.<sup>10</sup> Nevertheless, the grievant has put the agency on notice through this ruling request. Therefore, in the interest of expeditiously resolving procedural matters, EDR orders the agency to provide the grievant with the requested documentation or other appropriate response under the grievance procedure **within five workdays of receipt of this ruling** (to the extent they have not already done so).

#### CONCLUSION

For the reasons set forth above, EDR finds that the agency is in compliance with the grievance procedure with respect to the single management step. The grievant's ruling request is respectfully denied. The agency is ordered to respond to the grievant's document request as described above.

EDR's rulings on matters of compliance are final and nonappealable.<sup>11</sup>

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

---

<sup>8</sup> See *Grievance Procedure Manual* §§ 3.2, 3.4.

<sup>9</sup> See, e.g., EDR Ruling No. 2017-4429; EDR Ruling 2016-4196; EDR Ruling No. 2009-2321 n.1.

<sup>10</sup> See *Grievance Procedure Manual* § 6.3.

<sup>11</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).