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COMPLIANCE RULING

In the matter of the Virginia Community College System
Ruling Number 2024-5638
November 3, 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 her October 12, 2023 grievance with a community college (“the college” or “the agency”).

FACTS

On or about October 12, 2023, the grievant initiated this grievance with the college to address a variety of issues involving her supervisor (a Vice President with the college) under DHRM Policy 2.35, *Civility in the Workplace* and DHRM Policy 2.10, *Hiring*. A precipitating issue appears to be the grievant’s receipt of a performance improvement plan on September 14, 2023. The grievant submitted the grievance directly to her supervisor’s supervisor, who is also the President of the college (agency head). However, without consultation with the grievant, the college redirected the grievance to a Vice President who was not the grievant’s supervisor. That Vice President responded to the grievance in writing on or about October 19, 2023. The grievant has objected to this approach, leading the college to offer the grievance three procedural alternatives to continue with the grievance: 1) restart the process at the first step with the grievant’s supervisor, 2) continue the current process with a third different Vice President as the second step and the President as the third step, or 3) continue the current process with the President serving as a combined second and third step. The grievant rejected all of these options. As the parties were at impasse, this ruling has been sought to resolve the procedural issues in the grievance.

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.¹ 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

¹ See Va. Code § 2.2-3003(D).

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.²

According to the agency's designated step respondents listed on the EDR website, the college's step respondents are as follows: first step – immediate supervisor; second step – Vice President; third step - President.³ Because the grievant's immediate supervisor is also a Vice President (and a second-step respondent), normally the first and second steps would collapse into a single step with the required second step meeting. The grievant appears to have sought to skip her supervisor as a respondent, citing to Section 2.4 of the *Grievance Procedure Manual* that allows a grievant to do so when a grievance involves allegations of discrimination or retaliation against the supervisor.⁴ While the grievant appears to assert retaliation as an issue, it is not clear whether the retaliation claim meets the definition of retaliation applicable to this section. Nevertheless, it would appear that there is a satisfactory reason to determine that the grievant's immediate supervisor may not be an ideal choice for a step respondent in this case based on the allegations raised in the grievance. Accordingly, the college's attempt to substitute a different Vice President to serve as a step respondent was an appropriate approach, although one that should have been discussed with the grievant in advance. Furthermore, that substitute Vice President should have served as a combined first and second step with a meeting, which did not occur.

Absent just cause, EDR generally disfavors back-tracking in the steps of grievances as repeating steps would normally only serve to waste time, duplicate effort, and needlessly delay the grievance process.⁵ Consequently, the most appropriate approach in this instance is for the grievance to proceed beyond the first step that was provided by the substitute Vice President. While the grievant does not accept this response, EDR will not determine the response to be invalid under these facts. To do so would require returning the grievance to a first step response. The best option available is for this grievance to advance to the next step, beyond the Vice President level to the President. The President will serve as a combined second and third step with the required meeting.⁶ The combination of the steps is the result of the grievant's level within the agency with only one supervisor between her and the President. In such a situation, the steps of the grievance process

² 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.

³ The designated step respondents can be found on EDR's website at the following link: <https://www.dhrm.virginia.gov/employment-dispute-resolution/agencystepsrespondentlist>.

⁴ *Grievance Procedure Manual* § 2.4. A similar provision appears as to the second-step respondent, with options to designate a different second-step respondent or waive the meeting with the second-step respondent. *Id.* at § 3.2.

⁵ See, e.g., EDR Ruling No. 2017-4475; EDR Ruling No. 2014-3902.

⁶ See *Grievance Procedure Manual* § 3.2.

collapse.⁷ This is a simple and somewhat common result consistent with EDR's longstanding practices.⁸

CONCLUSION

For the reasons set forth above, EDR directs that a combined second and third step be conducted by the President of the college. Accordingly, within five work days of receipt of this ruling, the college must schedule a meeting between the grievant and the President of the college to be conducted according to Section 3.2 of the *Grievance Procedure Manual*.

EDR's rulings on matters of compliance are final and nonappealable.⁹

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⁷ 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?").

⁸ See, e.g., EDR Ruling No. 2017-4429; EDR Ruling 2016-4196; EDR Ruling No. 2009-2321 n.1.

⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).