

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: August 12, 2016; Ruling No. 2017-4397; Agency: Department of Juvenile Justice; Outcome: Agency Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Virginia Department of Juvenile Justice
Ruling Number 2017-4397
August 12, 2016

The Department of Juvenile Justice (the agency) has requested a compliance ruling related to the grievant's April 4, 2016 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 her grievance.

FACTS

On or about April 4, 2016, the grievant initiated an expedited grievance with the agency. It appears that a response was sent to the grievant on April 11, 2016, using the Grievance Form A – Expedited Process, but without a second resolution step meeting having been held. It is not clear how this response was sent to the grievant, and the agency has not provided the answer to EDR upon having been asked for more information regarding this issue. The agency indicated on the Grievance Form A that the meeting was not held “due to time,” but there is no indication of an agreement between the parties to waive the in-person meeting.

On June 13, 2016, the agency mailed the grievant a letter of noncompliance, by certified mail, requesting a response within five workdays upon receipt of the noncompliance letter. The certified mailing has been returned to the agency unclaimed. The agency now seeks to close the grievance because of the grievant's alleged noncompliance with the grievance procedure.

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 compliance 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the 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.³

In this case, the agency's request for a compliance ruling appears to be premature. Based on the documentation submitted by the agency, it is not clear to EDR that the grievant received the second step response. Further, absent an agreement to the contrary, the *Grievance Procedure Manual* requires an in-person meeting between the grievant and the second step-respondent for both expedited and regular grievances.⁴ Despite attempts to gather further information from the agency, EDR has not been able to determine why this meeting has not been held in this instance. Thus, unless an agreement to waive the second step meeting exists, the agency is ordered to hold such a meeting **within five workdays of the date of this ruling**. If the parties have agreed to waive this meeting, the agency is ordered to provide a copy of the second step response on the Grievance Form A to the grievant either in person, by mail, or by e-mail **within five workdays of the date of this ruling**.⁵

EDR's rulings on matters of compliance are final and nonappealable.⁶



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³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, 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 *Grievance Procedure Manual* § 3.2, 3.4.

⁵ *See Grievance Procedure Manual* § 3.4.

⁶ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).