

Issue: Compliance – Grievance Procedure (resolution steps); Ruling Date: May 29, 2018; Ruling No. 2018-4733; Agency: Department of Behavioral Health and Developmental Services; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2018-4733
May 29, 2018

The grievant has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management in relation to alleged noncompliance with the grievance procedure by the Department of Behavioral Health and Developmental Services (the “agency”).

FACTS

On or about October 10, 2017, the grievant initiated a grievance with the agency disputing the issuance of a Group II Written Notice and challenging other matters related to her employment. After the grievance advanced through the management resolution steps, the agency head partially qualified the grievance for a hearing in a response dated May 8, 2018. The agency head’s qualification decision stated that the grievant’s challenge to the Group II Written Notice qualified for a hearing, but that the remaining disputed issues did not. The grievant subsequently requested a compliance ruling from EEDR on May 21, 2018, alleging that the agency’s human resources staff was “noncompliant with the [grievance procedure] requirement to allow management to provide a written response for each resolution step.” In support of her position, the grievant contends that “[t]he repeated patterns of the responses are consistent with the language, formatting, and outcome documented by” the agency’s human resources staff.

DISCUSSION

The grievance procedure requires agency management and step-respondents to strike a careful balance between independent evaluation by the step-respondent and appropriate guidance and input by management. The *Grievance Procedure Manual* provides that a step-respondent must “identify the issues, gather information and review the facts,” and then provide a written response that “address[es] the issues and the relief requested and [notifies] the employee of his/her procedural options.”¹ The grievance procedure does not, however, require that a step-respondent carry out these responsibilities without input and guidance from higher level management and human resources staff, even if such counsel is not expressly sought by the step-respondent. To the contrary, because a step-respondent is in effect acting on behalf of the

¹ *Grievance Procedure Manual* §§ 3.1, 3.2, 3.3.

agency, guidance from these sources may be both necessary and appropriate.² In addition, the *Grievance Procedure Manual* requires each step-respondent to notify the agency's human resources office when he or she receives a grievance that has been initiated or advanced, a mandate which clearly contemplates some involvement by human resources staff in the grievance process.³

In this case, EEDR is not persuaded by the grievant's allegation that the agency's human resources staff has not complied with the grievance procedure by writing responses on behalf of the appropriate management step-respondents, if that has indeed occurred. The grievant has presented nothing to suggest that agency management or human resources staff has violated any explicit provision of the grievance procedure. Furthermore, the *Grievance Procedure Manual* explicitly contemplates that an agency head may delegate the authority to respond to a grievant's request for qualification, as well as address other grievance-related matters, on his or her behalf.⁴ In short, and although the grievant may disagree with the agency's positions on the matters she has challenged in her grievance, the management step responses at issue in this case substantially comply with the requirements of the grievance procedure.⁵

CONCLUSION

Based on the foregoing, EEDR finds that the agency has substantially complied with the requirements of the grievance procedure. The grievant is directed to advise the agency of her choice to either proceed based on the agency head's response partially qualifying the grievance for a hearing or appeal the agency head's partial qualification decision to EEDR **within five workdays of receipt of this ruling.**

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



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² For example, while the grievance procedure gives each step-respondent the right to grant relief, it also provides that this authority is subject to approval by the agency head. Va. Code § 2.2-3003(D).

³ *Grievance Procedure Manual* §§ 3.1, 3.2, 3.3.

⁴ *Id.* § 9.

⁵ *See id.* §§ 3.1, 3.2, 3.3, 4.2.

⁶ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).