

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: June 19, 2018;
Ruling No. 2018-4744; Agency: Department of Juvenile Justice; Outcome: Grievant
Not 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 Juvenile Justice
Ruling Number 2018-4744
June 19, 2018

The Department of Juvenile Justice (the “agency”) has requested a compliance ruling related to the grievant’s February 20, 2018 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 his grievance.

FACTS

On or about February 20, 2018, the grievant initiated a grievance with the agency. After proceeding through the management steps, the agency head denied qualification of the grievance for a hearing, via letter to the grievant dated May 21, 2018. On May 31, 2018, the agency mailed a letter of noncompliance to the grievant, indicating that the agency had not received a response from him and would request closure of the grievance if he did not respond within five workdays of receipt of the letter. Finally, on June 12, the agency requested a compliance ruling from EEDR regarding the February 20, 2018 grievance.

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 EEDR’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 EEDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EEDR 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

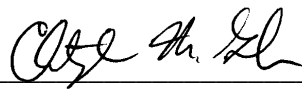
¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.³

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's qualification decision. Furthermore, the agency notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance. Under the *Grievance Procedure Manual*, the agency may now consider the grievance concluded.⁴

EEDR's rulings on matters of compliance are final and nonappealable.⁵



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Director
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³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR 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, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ *Grievance Procedure Manual* § 4.3.

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