



EMILY S. ELLIOTT  
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 Corrections  
Ruling Number 2019-4934  
June 6, 2019

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Department of Human Resource Management (DHRM) in relation to the grievant’s February 15, 2019 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 15, 2019, the grievant initiated a grievance with the agency. The grievance proceeded through the management resolution steps, and on April 1, 2019, the agency sent its third step response to the grievant by U.S. mail. The third step respondent concluded that the grievance was unfounded and denied relief. The record reflects no further response by the grievant. By letter dated April 17, 2019, the agency attempted to notify the grievant that he was out of compliance with the response timeline established by the grievance procedure and advised him that he could correct his noncompliance with an appropriate response within five workdays of the notice.<sup>2</sup> On May 21, 2019, having received no further response from the grievant, the agency requested a compliance ruling to permit administrative closure of the grievance. On May 24, 2019, the grievant advised EDR by email that he wished to pursue the grievance further, and EDR responded with compliance instructions as stated in the agency’s notice. However, there is no indication that the grievant has taken further action.

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> The evidence suggests that the agency’s attempted notification did not reach the grievant. The recipient address listed on the notice contains a discrepancy from the home address listed by the grievant on his Form A. To confirm receipt, EDR forwarded the agency’s notice to the grievant by email on May 24, 2019. He advised EDR that he had not previously received it.

## DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</sup> 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 of any noncompliance in writing and allow five workdays for the opposing party to correct it.<sup>4</sup> 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, which 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 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.<sup>5</sup>

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant did not advance or conclude his grievance within five workdays of receiving the agency's third step response.<sup>6</sup> Further, more than five workdays have elapsed since the grievant received the agency's notice of noncompliance from EDR, providing the opportunity to correct the noncompliance. The correction period has now passed, with no indication that the grievant has subsequently advanced or concluded his grievance despite his stated intention to move forward.

Because the grievant has apparently neither advanced nor concluded his grievance at this time, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance, if he has not already done so, **within 10 workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or to request that the agency head qualify the grievance for a hearing. If he has taken neither course within 10 workdays, the agency may administratively close the grievance with no further action required on its part. The grievance may then be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

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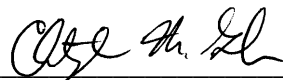
<sup>3</sup> *Grievance Procedure Manual* § 6.3.

<sup>4</sup> *See id.*

<sup>5</sup> 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 to be 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.

<sup>6</sup> *See Grievance Procedure Manual* § 3.3.

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).