

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: September 24, 2018; Ruling No. 2019-4783; Agency: Virginia Commonwealth University; 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 Virginia Commonwealth University  
Ruling Number 2019-4783  
September 24, 2018

Virginia Commonwealth University (the “University”) has requested a compliance ruling related to the grievant’s April 26, 2018 grievance. The University 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 April 26, 2018, the grievant initiated a grievance with the University. On August 14, 2018, the University issued the grievant its third step response to the grievance. On August 31, 2018, the University sent a letter of noncompliance to the grievant, via U.S. Mail and email, indicating that the University had not received a response from him and requesting a response within five workdays of receipt of the letter.<sup>1</sup> Finally, on September 19, the University requested a compliance ruling from EEDR regarding the April 26, 2018 grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> 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.<sup>3</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 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

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<sup>1</sup> The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. E.g., *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *See id.*

any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EEDR's order.<sup>4</sup>

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the University's third resolution step response, as required by the grievance procedure.<sup>5</sup> Moreover, the University notified the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. EEDR therefore orders the grievant to correct his noncompliance **within five work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the April 26, 2018 grievance or request qualification for hearing. If he does not, the University may administratively close the grievance without any further action on its part. The grievance may 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).

EEDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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<sup>4</sup> 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.

<sup>5</sup> See *Grievance Procedure Manual* § 3.3.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).