

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: November 16, 2017; Ruling No. 2018-4631; Agency: Department of Criminal Justice 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 Criminal Justice Services
Ruling Number 2018-4631
November 15, 2017

The grievant has requested a compliance ruling regarding her March 1, 2017 grievance with the Department of Criminal Justice Services (the “agency”). The grievant claims that the agency failed to comply with the grievance procedure in handling its response to the grievance and meeting at the second management resolution step.

FACTS

On or about March 1, 2017, the grievant initiated a grievance with the agency, challenging her 2015-2016 performance evaluation. On September 25, 2017, the second resolution step meeting was held. On September 27, 2017, the grievant issued a memorandum to the agency head, through the designated human resources representative, alleging that the meeting did not comply with the requirements set forth in the *Grievance Procedure Manual*. The grievant requested that the agency designate a new second step-respondent and hold another resolution step meeting. On or about September 29, 2017, the agency head responded to the grievant, denying her request for another second step meeting. The grievant now seeks a compliance ruling from this Office.

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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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 EEDR's order.³

Here, the grievant asserts that the second resolution step meeting did not satisfy the requirements of the grievance procedure for the following reasons:

- 1) The grievant alleges that the second step-respondent is prejudiced against her and "badgered" her during the meeting;
- 2) She alleges that she was not allowed to examine or introduce relevant documents or ask "a wide-ranging series of questions" in order to gain a better understanding of the issues; and
- 3) She alleges that she was not provided with enough time for the meeting and thus was unable to fully present her case.

EEDR has thoroughly reviewed the information presented by both the grievant and the agency, including the notes taken by an agency representative during the second step meeting, and determined that the alleged conduct of the agency's second step-respondent during the second management step meeting has not violated any provision of the *Grievance Procedure Manual* such that a subsequent second step meeting would be appropriate.⁴ The grievance procedure does not expect the second step-respondent to serve as a disinterested party.⁵ As explained in EDR Ruling No. 2004-916:

Although a step respondent should conduct the meeting in an even-handed manner and with an open mind, he is a member of management, not a neutral party. While we recognize the frustration for grievants that may result from this, allowing the disqualification of step respondents because of their managerial actions would throw the resolution step process into chaos, if not render it wholly ineffectual. Further, while the resolution step process involves only the parties to a grievance, the hearing process allows grievants an opportunity to present qualifying claims to a neutral, third-party hearing officer.

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 A review of the notes taken during this meeting appears to demonstrate that tension existed throughout most of the meeting, and each party may have interrupted the other at least on occasion. Indeed, at one point, the note taker indicates that the grievant raised her voice such that he or she could not accurately record what the parties said at that time. However, EEDR declines to conclude that a violation of Section 1.9 of the *Grievance Procedure Manual* occurred based upon the information presented by the parties.

⁵ See EDR Ruling Nos. 2006-1279, 2006-1315.

The grievant and the agency should be mindful that the second resolution step meeting is a meeting between parties to a grievance, and that both sides bring to that meeting their perspectives, experiences, and understandings. Indeed, the management resolution phase of the grievance process was designed to allow the parties to the dispute to exchange information and attempt to resolve the issues themselves, without the assistance of a neutral third party.

The grievant further alleges that she was not provided with enough time for the meeting, and she did not have the opportunity to fully present her case. Specifically, she states that she was not allowed to examine or introduce relevant documents or ask “a wide-ranging series of questions.” In response, the agency denies that the grievant was prohibited from introducing or examining documents, and asserts that “the Second Step Respondent requested that the Grievant share her new information with him, but the Grievant never relinquished the information” to him. Even assuming for purposes of this ruling only that the grievant’s allegations are accurate, we note that the second management step meeting was three hours long, and the grievant has attached extensive supporting documentation to her grievance. Given the generous amount of time the grievant had at the second resolution step meeting, as well as the extensive supporting documentation provided by the grievant, we do not see how the alleged conduct of the agency’s second step-respondent during the second resolution step meeting violated any provisions of the *Grievance Procedure Manual*.⁶ Accordingly, we do not find the agency in noncompliance as to the grievant’s claims.

CONCLUSION

For the reasons discussed above, there is no basis for EEDR to conclude that the agency has failed to comply with the grievance procedure at this time or to order that the agency hold another second step meeting. As it appears that the agency has now issued its second step response to the grievant, within five workdays of the date of this ruling, the grievant shall advance or conclude her grievance, using the Grievance Form A. EEDR’s rulings on matters of compliance are final and nonappealable.⁷



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁶ To the extent that the second step-respondent refused to address the grievant’s argument that discrimination, retaliation, and/or harassment improperly influenced her performance evaluation, EEDR notes that the grievant has not initiated a discrimination complaint with this Office that would prohibit her from raising those issues in a grievance. Thus, the agency must consider the grievant’s theories of discrimination, retaliation, and harassment as raised in the March 1, 2017 grievance at the next step, to the extent they have not already been addressed explicitly.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).