

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 24, 2017; Ruling No. 2018-4602, 2018-4603; Agency: Department of Juvenile Justice; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution¹

COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
Ruling Numbers 2018-4602, 2018-4603
August 24, 2017

The Department of Juvenile Justice (the “agency”) 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 the grievant’s December 13, 2016 and February 15, 2017 grievances. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding the grievances.

FACTS

The grievant initiated two grievances with the agency on or about December 13, 2016 and February 15, 2017, respectively. The third step response to the December 13 grievance was issued to the grievant on or about February 9, 2017.² The third step response to the February 15 grievance was issued to the grievant on or about April 19, 2017.³ Having received no further response from the grievant indicating whether he wished to advance or conclude the grievances, on or about May 10, 2017, the agency mailed, by certified mail, a notice of noncompliance to the grievant. In the notice of noncompliance, the agency requested a response to the December 13 grievance within five workdays of the grievant’s receipt of the notice, but did not mention the February 15 grievance. The certified mail receipt indicates that the notice of noncompliance was delivered to an individual at the grievant’s address on May 15. The agency now seeks a compliance ruling allowing it to administratively close the grievances.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁴ That process assures that the parties first communicate with each

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. The *Grievance Procedure Manual* has now been updated to reflect this Office’s name post-merger as the Office of Equal Employment and Dispute Resolution.

² Although the third step response and the Grievance Form A are dated February 2, 2017, the cover letter attached to the third step response is dated February 9, 2017. For purposes of this ruling, EEDR will consider the cover letter to accurately reflect the date of issuance.

³ The third step response itself and the Grievance Form A are dated April 4, 2017, while the cover letter attached to the response is dated April 19, 2017. EEDR will again assume that the cover letter contains the correct date of issuance, as it is the later of the two dates.

⁴ *Grievance Procedure Manual* § 6.3.

other about the noncompliance, and resolve any compliance problems voluntarily, without EDR'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.⁵ 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, 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 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.⁶

In this case, the grievant appears to have failed to advance or conclude his grievances within five workdays of receiving the agency's third resolution step responses, as required by the grievance procedure.⁷ The agency has notified the grievant of his noncompliance with regard to the December 13 grievance, and he has not advanced or concluded that grievance. As the grievant has failed to advance or conclude the December 13 in a timely manner, he has failed to comply with the grievance procedure.

However, the agency's request for a compliance ruling with regard to the February 15 grievance appears to be premature because it has not shown that the grievant has been notified in writing of the alleged procedural violation. Ordinarily, this is a situation in which EEDR would direct the agency to give the grievant written notice of the alleged noncompliance relating to the February 15 grievance and allow the grievant five work days to correct any noncompliance before seeking a compliance ruling. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the agency provided the grievant with the third step response to the February 15 grievance and the grievant has not responded.

Accordingly, and in the interest of expeditiously resolving the issues raised in the grievances, the grievant is therefore ordered to correct his noncompliance **within ten workdays of the date of this ruling**, to the extent he has not already done so,⁸ by notifying his human resources office in writing that he wishes either to conclude one or both of the two grievances or request qualification from the agency head for one or both of the two grievances.⁹ If he does not,

⁵ See *id.*

⁶ 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 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.

⁷ See *Grievance Procedure Manual* § 3.3.

⁸ While this ruling was pending, the grievant contacted EEDR to inquire about the status of his grievances having received notice of the opening of this ruling. If the grievant wishes to proceed with his grievances, he must indicate on the forms his intent to advance them and provide them to the agency consistent with the provisions of this ruling.

⁹ See *Grievance Procedure Manual* § 3.3.

the agency may administratively close the grievances without any further action on its part. The grievances 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).

EDR's rulings on matters of compliance are final and nonappealable.¹⁰



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¹⁰ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).