

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: January 24, 2013; Ruling No. 2013-3519; Agency: Department of Juvenile Justice; Outcome: Agency Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
EDR Ruling Number 2013-3519
January 24, 2013

The Department of Juvenile Justice (“agency”) has requested a compliance ruling related to the grievant’s November 7, 2012 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure by not timely scheduling the second resolution step meeting.

FACTS

On November 7, 2012, the grievant initiated a grievance with the agency. On November 27, 2012, the agency’s second step-respondent sent a memorandum to the grievant by certified mail, attempting to schedule the second resolution step meeting. The postal record reflects that the grievant signed for the memorandum on November 30, 2012. After the agency’s second step-respondent did not receive a response from the grievant, she sent an e-mail to the agency’s human resource supervisor informing her that the grievant had not contacted the agency as of December 12, 2012.

Since more than five workdays have elapsed since the agency sent the memorandum to the grievant, and the grievant has not yet scheduled the second resolution step meeting, the agency seeks a compliance ruling allowing it to administratively close the 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 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.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 EDR, who may in turn order the party to

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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.³

The *Grievance Procedure Manual* provides that “[w]ithin 5 workdays of the second-step respondent’s receipt of the grievance, the second-step meeting must be held.”⁴ Presumably the agency alleges that the grievant has violated this portion of the grievance procedure by failing to contact the agency in regards to scheduling his second resolution step meeting. Although there is no specific provision in the grievance procedure expressly requiring parties to cooperate with the scheduling of the second resolution step meeting, certainly such cooperation is expected. Non-responsiveness by parties to a grievance does not support the purpose of the grievance process to resolve workplace disputes fairly and promptly.⁵

In this case, however, the agency’s request for a compliance ruling appears to be premature because the agency has not shown that it first notified the grievant in writing of the alleged procedural violation, as required by the grievance procedure. The agency is therefore advised that if it still desires a compliance ruling from EDR, it must first give written notice of the alleged noncompliance to the grievant and allow the grievant five work days to correct any noncompliance. Only after the agency has satisfied this procedural prerequisite will EDR address any claim of noncompliance.

Finally, we note that if the grievant continues to be non-responsive to the agency’s requests to schedule the second resolution step meeting, the agency could simply select a meeting date and notify the grievant. If the grievant does not appear for the meeting, the agency could simply respond to the grievance in writing without the input of the grievant during a face-to-face meeting.⁶ In the alternative, the agency could request another compliance ruling at that time seeking administrative closure of the grievance following the requisite notice of noncompliance.

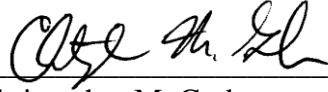
³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* 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.

⁴ *Grievance Procedure Manual* § 3.2.

⁵ See *Grievance Procedure Manual* § 1.1.

⁶ If the agency provides a response without first meeting with the grievant, however, the agency will waive the right to allege noncompliance by the grievant in not coming to the meeting. Number 13 of the Frequently Asked Grievance Questions on EDR’s website provides that “any party to a grievance has a right to insist on the second-step meeting, and if either party demands it, then the second-step meeting generally must take place.” Frequently Asked Grievance Questions, No. 17, <http://www.dhrm.virginia.gov/EDR/faqs.htm>.

EDR's rulings on matters of compliance are final and nonappealable.⁷



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