

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: April 9, 2013; Ruling No. 2013-3577; Agency: University of Mary Washington; Outcome: Grievant Not in Compliance.



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

**COMPLIANCE RULING**

In the matter of the University of Mary Washington  
Ruling Number 2013-3577  
April 9, 2013

The University of Mary Washington (“agency”) has requested a compliance ruling related to the grievant’s February 18, 2013 grievance. The agency alleges that the grievant has failed to comply with the grievance procedure by not participating in or agreeing to schedule the second step meeting.

FACTS

On or about February 18, 2013, the grievant initiated a grievance with the agency. The agency states that the grievant elected to initiate the grievance at the second step. Prior to the scheduling of the second step meeting, the grievant went out on leave and was subsequently terminated from employment. By letter dated March 8, 2013, the agency advised the grievant that she retained the right to continue with her grievance despite her termination and asked her to contact the agency by March 15<sup>th</sup> to schedule the second step meeting. On March 19, 2013, after the grievant failed to respond, the agency gave the grievant written notice of her noncompliance with the grievance procedure. Since more than five workdays have elapsed with no response from the grievant, the agency now 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.<sup>1</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 in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</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, 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

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See id.*

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>3</sup>

In this case, the grievant appears to have failed to respond to the agency's attempts to schedule the second step meeting.<sup>4</sup> Moreover, the agency notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or proceed to the second step. If she does not, the agency 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).

EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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<sup>3</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 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>4</sup> See *Grievance Procedure Manual* § 3.2.

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