

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: April 23, 2013;  
Ruling No. 2013-3587; Agency: Department of Corrections; Outcome: Agency in  
Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling No. 2013-3587  
April 23, 2013

The grievant has requested a ruling on whether the Department of Corrections (the “agency”) is in compliance with the grievance procedure with regard to her March 20, 2013 grievance. For the reasons discussed below, the grievance should now proceed through the management steps.

FACTS

On March 20, 2013, the grievant initiated a grievance concerning an alleged misapplication of state policy. The grievant’s local human resource officer attempted to contact the grievant by phone on March 21, 2013 seeking more information about details contained in the grievance, to which the grievant did not respond. On March 27, 2013, the human resource officer requested information again via email. After this second request, the grievant filed a complaint with the agency regarding an unrelated harassment issue. The grievant has not responded to the agency’s request for information, nor has the agency’s first step-respondent provided the grievant with a written response to the issues contained in her grievance. The grievant seeks a compliance ruling from EDR.<sup>1</sup>

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 EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party

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<sup>1</sup> The grievant has not presented any evidence that she has notified the agency of its failure to comply with the first management step as required by Section 6.3 of the *Grievance Procedure Manual*. However, in the interest of resolving both the grievant’s and the agency’s concerns in this case, EDR will address the grievant’s compliance request as if she had notified the agency of its noncompliance.

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

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 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.<sup>4</sup>

The *Grievance Procedure Manual* provides that “[w]ithin 5 workdays of receiving the grievance, the first-step respondent must provide a written response on the Grievance Form A or an attachment.”<sup>5</sup> The grievant appears to allege that the agency has violated this portion of the grievance procedure by requesting information from the grievant, rather than advancing the grievance to the first management step for attempted resolution. The agency has not proceeded to the first management step because of a desire to clarify the content of the grievance itself, as well as avoid any potential conflict with the grievant's unrelated harassment complaint. Although there is no specific provision in the grievance procedure expressly allowing the agency to request information prior to advancing a grievance to the first management step, or requiring the grievant to comply with such a request, certainly some kind of engaged communication in response to discussion concerning an active grievance is expected. Nonresponsiveness by parties to a grievance does not support the purpose of the grievance process to resolve workplace disputes fairly and promptly.<sup>6</sup>

Therefore, in the interest of promoting management's expedient processing and resolution of grievances, the grievant should contact the agency as soon as possible after receipt of this ruling to provide a response to the agency's inquiries. If, however, the grievant chooses not to respond to its request, the agency must provide the grievant with the first resolution step response **within ten work days of the date of this ruling**. While it may be more helpful to the process of this grievance for the agency to receive substantive responses to its inquiries, there is nothing preventing the agency from proceeding with the first resolution step of this timely-filed grievance. If either the grievant or the agency experiences any other issues with procedural compliance in the resolution of this grievance, they must be addressed through the process outlined in Section 6.3 of the *Grievance Procedure Manual*.

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<sup>3</sup> *Id.*

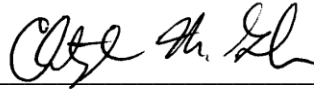
<sup>4</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *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>5</sup> *Grievance Procedure Manual* § 3.1.

<sup>6</sup> *See Id.* at § 1.1.

CONCLUSION

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).