

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: April 10, 2014;  
Ruling No. 2014-3860; Agency: Department of Juvenile Justice; 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 Department of Juvenile Justice  
Ruling Number 2014-3860  
April 10, 2014

The Department of Juvenile Justice (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s June 10, 2013 and October 28, 2013 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 these grievances.

FACTS

On or about June 10, 2013, the grievant initiated a grievance with the agency. After she advanced the grievance to the second step, the second step-respondent issued his response on or about August 29.<sup>1</sup> Having received no further response from the grievant, on or about November 7, 2013, the agency mailed, by certified mail, a notice of noncompliance to her. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of her receipt of the notice. The certified mail receipt indicates that the notice of noncompliance was returned to the agency because it was unclaimed. The agency sees to close the June 10 grievance for the the grievant’s apparent failure to advance or conclude it.

On or about October 28, 2013, the grievant initiated a second grievance with the agency. After the grievant advanced this grievance to the second step, the second step-respondent issued his response on or about November 25, 2013. It does not appear that the grievant has advanced or concluded her grievance since that date. As more than five workdays have elapsed since the grievant presumably received the second step response and she has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the October 28 grievance.

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

---

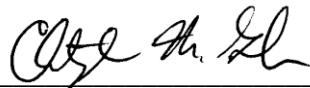
<sup>1</sup> The second step-respondent appears to have granted the grievant’s requested relief .

<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>

In this case, the agency's request for a compliance ruling appears to be premature because it has not shown that it first notified the grievant in writing of the alleged procedural violation with respect to both the June 10 and October 28 grievances. There is no indication that the notice of noncompliance related to the June 10 grievance has been received by the grievant. Likewise, it does not appear that the agency has provided the grievant with a notice of noncompliance informing her that the October 28 grievance is not in compliance with the grievance procedure. 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 second step responses to both grievances and the grievant has not responded. In the interest of expeditiously resolving the issues raised in these grievances, the grievant is ordered 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 grievances or proceed to the third step.<sup>5</sup> If she does not, 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.<sup>6</sup>



---

Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

---

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

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).