

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 14, 2014;
Ruling No. 2014-3883; 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 2014-3883
May 14, 2014

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management regarding the alleged failure of the Department of Juvenile Justice (the “agency”) to comply with the time limits set forth in the grievance procedure.

On or about April 19, 2014, the grievant initiated an expedited grievance with the agency. The second step meeting was held on April 25, 2014. Having not received the second step response within five workdays of the second step meeting, the grievant submitted a request for a compliance ruling to EDR on or about May 7, 2014.

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 the 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, which 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.³

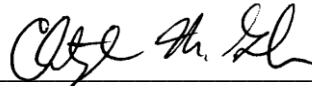
¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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.

In this case, the grievant's request for a compliance ruling appears to be premature because it does not appear that she first notified the agency in writing of the alleged procedural violation. Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the second step meeting and the agency has not responded.⁴ While this ruling was pending, the agency informed EDR that the second step response had been mailed the grievant, by certified mail, on May 3, 2014. As of May 12, the grievant states she has not received the second step response. In the interest of expeditiously resolving the issues raised in the grievance, the agency is therefore ordered to provide the grievant with the second step response to the extent it has not already done so **within ten workdays of the date of this ruling.**⁵

EDR's rulings on matters of compliance are final and nonappealable.⁶



Christopher M. Grab
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⁴ See *Grievance Procedure Manual* § 3.2.

⁵ See *id.*

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).