

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: May 14, 2014;
Ruling No. 2014-3886; Agency: University of Virginia; Outcome: Agency in
Compliance.



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

COMPLIANCE RULING

In the matter of the University of Virginia
Ruling Number 2014-3886
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 in relation to the alleged failure of the University of Virginia (the “University”) to comply with the grievance procedure.

FACTS

The grievant currently has three grievances in progress with the University. All three grievances challenge interrelated issues arising from two management actions, an Educational Studies Contractual Agreement and a Demand Letter. On May 2, 2014, the grievant’s supervisor requested to meet with the grievant on May 6 to discuss potential disciplinary action “on matters related to the Agreement and the Letter.” On May 5, the grievant asked his supervisor to delay the meeting, asserting that the University’s decision to hold such a meeting was not compliant with the grievance process because those management actions are currently the subject of grievances. The grievant sent the University President a notice of noncompliance on May 6 explaining his position that the meeting was not in compliance with the grievance procedure. The University declined to delay the meeting and it went forward as scheduled on the same date. On May 12, the grievant requested a compliance ruling from EDR.

DISCUSSION

The grievance procedure provides that “[p]arties . . . shall not engage in conduct that undermines the integrity of the grievance process including, but not limited to, behavior that unnecessarily delays the process or unfairly prejudices the opposing party.”¹ The grievant claims that the University’s decision to hold a pre-determination meeting about the potential issuance of disciplinary action violates this provision of the grievance process because the issues discussed at the meeting were “intertwined” with the pending grievances. He asserts that the University’s choice to pursue disciplinary action while the grievances are still pending will both “undermine[] the integrity of the grievance process” and “unfairly prejudice[]” him going forward.²

¹ *Grievance Procedure Manual* § 1.9.

² *Id.*

There is nothing in the grievance procedure that requires agencies to postpone or delay the issuance of disciplinary action merely because the misconduct that may be subject to discipline is related to a pending grievance. That the grievant in this case may be disciplined for alleged misconduct that is connected to the grieved management actions does not modify, suspend, or otherwise alter the University's authority to issue disciplinary action for such potential misconduct if it chooses to do so.³ Likewise, the grievant's obligation to comply with the University's directives regarding pre-determination meetings and any other matters, whether related to the management actions that are challenged in the grievances or not, remains similarly unaltered while the grievances proceed. In short, the fact that the grievances have been filed does not hold in abeyance the University's ability to issue directives to the grievant while they are in progress.⁴

Accordingly, there is no basis for EDR to conclude that the University has failed to comply with the grievance procedure at this time. The parties are directed to continue with the management resolution steps for each of the three pending grievances. The party responsible for taking the next action as required by the grievance procedure is directed to do so **within ten workdays of the date of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ Should he ultimately receive any disciplinary action, the grievant may file another grievance to contest the merits of any such action.

⁴ This ruling only addresses whether the University may proceed with the disciplinary process while the grievances are pending. Because the grievances have not yet reached the qualification phase, EDR has not considered the relative merits of the parties' positions regarding the underlying issues here, and nothing in this ruling is meant to indicate otherwise.

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