

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 29, 2014;  
Ruling No. 2014-3897; 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 2014-3897  
May 29, 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 March 5, 2014 grievance. The agency alleges that the grievant has failed to comply with the time limits for advancing or concluding her grievance.

FACTS

On or about March 5, 2014, the grievant initiated a grievance with the agency. After the first step response was issued to the grievant on or about March 21, 2014, the grievant notified the agency that it was not in compliance and ultimately sought a compliance ruling from EDR.<sup>1</sup> In Ruling No. 2014-3854, issued on April 16, 2014, EDR found that the agency had not failed to comply with the grievance procedure and directed the grievant to advance her grievance to the second step or conclude the grievance within ten workdays of the date of the ruling. The grievant subsequently advised the agency that she would be requesting reconsideration of the compliance ruling by EDR and would therefore not be taking the directed action within ten workdays.

In a May 1, 2014 letter, after the grievant failed either to request reconsideration or take action with respect to the grievance, the agency advised the grievant, by certified mail, that she was not in compliance with the grievance procedure and asked her to respond within five workdays. Although the postal service gave the grievant notice of the certified letter, the letter was unclaimed by the grievant. On or about May 13, 2014, the agency sent another letter advising the grievant of her noncompliance, this time by regular mail. As the grievant has not yet advanced or concluded her grievance, the agency 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>2</sup> That process assures that the parties first communicate with each

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<sup>1</sup> See EDR Ruling No. 2014-3854.


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

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>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 grievant appears to have failed to advance or conclude her grievance within ten workdays of EDR Ruling No. 2014-3854, as directed by EDR. Moreover, the agency has notified the grievant of her noncompliance and she 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. We therefore order the grievant to correct her noncompliance **within ten workdays 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> 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 Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).