

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: June 6, 2014; Ruling No. 2014-3902; Agency: Old Dominion University; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of Old Dominion University  
Ruling Number 2014-3902  
June 6, 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 Old Dominion University (the “University”) to comply with the grievance procedure.

FACTS

On or about April 25, 2014, the grievant filed an expedited grievance alleging retaliation by the University based on his exercise of “grievance, FOIA, and EEO rights.”<sup>1</sup> The grievant initially informed the University that he wished to waive the second step meeting and receive only a written response. Consistent with this request, the second step-respondent provided the grievant with a written response via email on May 13. Approximately two hours before the second step response was issued, however, the grievant notified the University that he now wished to “request an alternate respondent” rather than waive the second step meeting. The University apparently did not respond to the grievant’s request that it designate an alternate second step-respondent. Subsequently, the grievant requested a compliance ruling from EDR.<sup>2</sup>

In EDR Ruling Number 2014-3890, issued May 21, 2014, EDR ordered the grievant to provide the University a notice of noncompliance with the grievance procedure and allow the University five workdays to correct the alleged noncompliance.<sup>3</sup> On May 23, the grievant notified the University President that it was not in compliance with the grievance procedure. Having apparently received no further response from the University, the grievant requested a compliance ruling from EDR on June 3.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>4</sup> That process assures that the parties first communicate with each

---

<sup>1</sup> The full procedural and substantive facts of this case are set forth in EDR’s prior compliance rulings on this matter and are incorporated herein by reference. *See* EDR Ruling No. 2014-3890; EDR Ruling No. 2014-3881.

<sup>2</sup> *See* EDR Ruling No. 2014-3980.

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

<sup>4</sup> *Grievance Procedure Manual* § 6.3.

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.<sup>5</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, 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.<sup>6</sup>

In an expedited grievance in which the grievant "alleges retaliation or discrimination by the individual who would otherwise serve as the agency's single management step-respondent," the employee may either "[r]equest that the agency designate another single management step-respondent" or "[w]aive the face-to-face meeting with the original single management step-respondent, and be allowed to meet with the person designated as the agency's third step-respondent or alternate single management step-respondent."<sup>7</sup> While it appears that the grievant's request for an alternate step-respondent is consistent with the grievance procedure, it is not clear what would be accomplished were EDR to order the University to designate an alternate step-respondent, hold the second step meeting, and issue another second step response.

The University issued a written second step response because the grievant unequivocally stated that he wished to waive the second step meeting.<sup>8</sup> While we understand that the grievant's position has now changed, it is clear that the issuance of a written second step response was consistent with the previous communications between the parties. The grievant only informed the University that he wanted it to designate an alternate second step-respondent several hours before the second step response was issued. Given the particular circumstances of this case, we are not convinced that this process should be repeated, and the grievant has provided no information to show why it may be necessary. For example, we have reviewed nothing to indicate the University's response to the grievant's allegations would materially differ in any way from the response that has already been provided. Indeed, it would appear that requiring the University to designate an alternate step-respondent and hold the second step meeting would only serve to waste time, duplicate effort, and needlessly delay the grievance process. In short, it is more efficient in this case to advance the grievance to the qualification phase rather than

---

<sup>5</sup> *See id.*

<sup>6</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>7</sup> *Grievance Procedure Manual* § 3.4.

<sup>8</sup> Indeed, the University initially took the position that the second step meeting must be held. Although the reason for the University's decision to waive the second step meeting is unclear, it appears that the grievant initially indicated his desire to waive the meeting.

continue to hold the grievance at the second step. Accordingly, the grievant is directed to notify the University that he wishes either to conclude his grievance or request that the University President qualify his grievance for hearing **within ten workdays of the date of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.<sup>9</sup>



---

Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

---

<sup>9</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).