

Issue: Compliance – Grievance Procedure (5 Day Rule); Ruling Date: March 28, 2016; Ruling No. 2016-4328; Agency: Department of Juvenile Justice; Outcome: Agency 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 2016-4328
March 28, 2016

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 her March 3, 2016 grievance with the Department of Juvenile Justice (the “agency”). The grievant alleges that the agency has failed to comply with the time limits set forth in the grievance procedure for responding to her grievance.

On or about March 3, 2016, the grievant initiated a grievance with the agency. The Grievance Form A indicates that the first step-respondent effectively received the grievance on March 7. On March 20, the grievant notified the agency head that the agency was not in compliance with the grievance procedure because the first step response had not been issued to her within five workdays, as required by the grievance procedure.¹ On March 24, the grievant requested a compliance ruling from EDR.

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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 in writing and allow five workdays for the opposing party to correct any noncompliance.³ 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.⁴

¹ See *Grievance Procedure Manual* § 3.1.

² *Id.* § 6.3.

³ See *id.*

⁴ 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

In this case, the grievant's request for a compliance ruling appears to be premature because she did not allow the agency a full five workdays to correct the noncompliance after notifying the agency head in writing of the alleged procedural violation.⁵ While this ruling was pending, the agency provided EDR with information to show that the first step response was issued to the grievant by email on March 24, 2016.⁶ As the agency has come into compliance with the grievance procedure by providing the grievant with the first step response, the grievant's request for a compliance ruling is moot and no further relief is available from EDR at this time.⁷

EDR's rulings on matters of compliance are final and nonappealable.⁸



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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.

⁵ The grievant sent her notice of noncompliance to the agency head by email on March 20, 2016, a Sunday. Pursuant to Section 6.3 of the *Grievance Procedure Manual*, the agency had five workdays, or until Friday, March 25, to correct the alleged noncompliance before the grievant could properly seek a compliance ruling from EDR.

⁶ According to the agency, a paper copy of the response was also sent to the grievant at her facility on March 23.

⁷ See *Grievance Procedure Manual* § 6.3.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).