

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 22, 2018; Ruling No. 2018-4679; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Behavioral Health & Developmental Services
Ruling Number 2018-4679
March 22, 2018

The Department of Behavioral Health & Developmental Services (the agency) has requested a compliance ruling from the Office of Equal Employment and Dispute Resolution (EEDR) at the Department of Human Resource Management related to the grievant's October 10, 2017 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

On October 10, 2017, the grievant initiated a grievance with the agency. On December 29, 2017, the third step respondent issued his response to the grievant via a letter addressed to the grievant at the agency's physical location. The grievant retrieved this letter in person from the Human Resources department on January 8, 2018. On January 29, 2018, the agency sent the grievant a notice of noncompliance via email, indicating that the agency had not received a response from her and requesting a response within five workdays upon her receipt of the email. The grievant responded the same day, indicating that she would respond the following day. However, on the following day the grievant requested three additional days in order to respond. As the agency had allowed the grievant this time via its notice of noncompliance, no further response was provided to the grievant's request.

On February 5, 2018, the grievant again requested additional time to reply to the third step response, alleging that "pertinent information" had been altered and removed from her grievance. Via email, the agency denied the grievant's request for another extension, advising her that it would request administrative closure from EEDR if no response was received by the end of the day. Having received no response, the following day, the agency requested that EEDR administratively close this grievance.

DISCUSSION

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 EEDR's involvement. Specifically, the party claiming noncompliance must notify the other

¹ *Grievance Procedure Manual* § 6.3.

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 EEDR, 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 EEDR 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 EEDR's order.³

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.⁴ Moreover, the agency notified the grievant of her noncompliance, but the grievant 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.⁵ EEDR therefore orders the grievant to correct her noncompliance **within five work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the October 17, 2017 grievance or request qualification for hearing. 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).

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



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

² See *id.*

³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party, EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR 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, EEDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ See *Grievance Procedure Manual* § 3.3.

⁵ The grievant provided approximately 400 pages of supplemental material to EEDR regarding this grievance. EEDR has carefully reviewed this information, and concludes that it appears to relate to the subject matter of the grievance itself, rather than the grievant's failure to advance her grievance. Thus, the supplemental documentation will not be further addressed in this ruling. However, should the grievant continue to allege that the agency is out of compliance with the grievance procedure, she may raise that issue to EEDR in a subsequent request for a ruling.

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