

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: September 4, 2013; Ruling No. 2014-3707; Agency: Department of Corrections; Outcome: No Ruling – issue is moot.



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

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2014-3707  
September 4, 2013

The grievant has asked for a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management. The grievant claims that the agency held a noncompliant second step meeting.

FACTS

The grievant submitted her grievance on or about August 20, 2013. A second step meeting was held on August 26, 2013. The grievant claims that she was informed of this meeting ten minutes before the meeting was to commence. Thus, she alleges that the agency has not complied with the grievance procedure because she did not have sufficient time to prepare or have a person of her choice attend the meeting with her. The agency states the grievant was informed of the meeting the Friday preceding (August 23) the Monday (August 26) meeting.

DISCUSSION

Under the grievance procedure, a grievant is entitled to have an individual present with him or her at the second step meeting.<sup>1</sup> If we assume the grievant's description of events is accurate,<sup>2</sup> because the second step-respondent did not provide advance notice of the meeting, the grievant would have been presumably unable to have a representative attend the meeting with her. Scheduling a second step meeting in a manner that would prohibit a party from having its chosen representative attend could be noncompliance with the provisions of the grievance procedure in some cases.<sup>3</sup>

However, the grievance procedure provides that "[a]ll claims of noncompliance should be raised immediately. By proceeding with the grievance after becoming aware of a procedural violation, one may forfeit the right to challenge the noncompliance at a later time."<sup>4</sup> Here, following the second step meeting, on the same day, the grievant checked the box on the Grievance Form A to proceed to the next step and submitted the paperwork to the agency.

---

<sup>1</sup> *Grievance Procedure Manual* § 3.2.

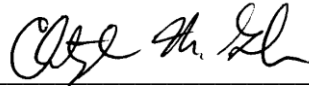
<sup>2</sup> If the agency is relying on the August 23, 2013 e-mail from Supervisor J to suggest that the grievant was informed of the second step meeting on that date, the August 23<sup>rd</sup> e-mail does not provide notice of any such meeting.

<sup>3</sup> *Grievance Procedure Manual* § 3.2; *see also* EDR Ruling No. 2013-3543.

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

Accordingly, because the grievant has sought to proceed to the next step, it would appear that she has effectively waived her challenge to any alleged noncompliance with the scheduling of the second step meeting.<sup>5</sup> Thus, we consider this issue moot and this ruling will be closed.<sup>6</sup>

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



---

Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

---

<sup>5</sup> Although the grievant may have raised her procedural noncompliance challenge to the agency head at about the same time as submitting her grievance paperwork to proceed to the next step, EDR's practice is to recognize that once the grievant has proceeded beyond the step at which the noncompliance occurs or even proceeded with the challenged meeting without objection, the issue is waived. *See, e.g.*, EDR Ruling No. 2004-752 (determining that grievant waived any challenge to agency's alleged noncompliance concerning the second step meeting when, with knowledge of the alleged noncompliant conduct beforehand, the grievant proceeded with the meeting anyway); EDR Ruling No. 2003-042 (same); EDR Ruling No. 2002-036 (finding that grievant who advanced grievance to third step in absence of second-step meeting waived noncompliance).

<sup>6</sup> We will comment, however, that if the grievant's sequence of events is accurate, the agency held a second step meeting in a manner that did not allow the grievant to have a representative present. Second step meetings should be scheduled in such a way to allow a grievant's representative to attend. *See* EDR Ruling No. 2013-3543.

<sup>7</sup> Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).