

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: October 18, 2013; Ruling No. 2013-3736; Agency: Virginia Department of Transportation; Outcome: No Ruling – Issue Moot.



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

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2014-3736
October 18, 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 Virginia Department of Transportation (the agency) used a noncompliant second step-respondent during his grievance.

FACTS

The grievant argues that the agency's second step-respondent was not the proper step-respondent in his grievance. The second step-respondent, the District Maintenance Engineer, provided a response on or about August 2, 2013. The grievant asserts that the proper second step-respondent was the District Administrator. The grievant has not indicated that he raised an objection at that time. The grievant proceeded with his grievance to the third resolution step. At the time he requested qualification of his grievance for a hearing, on or about August 22, 2013, he raised the issue of alleged noncompliance to the agency head. At no time did the grievant request a ruling from EDR on the issue until after his grievance was qualified and appointed to a hearing officer for hearing.

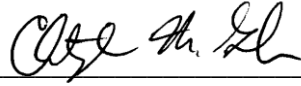
DISCUSSION

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."¹ Here, following the second step of his grievance, the grievant chose to proceed to the next step and submitted the paperwork to the agency. Accordingly, because the grievant sought to proceed to the next step without raising the issue of alleged noncompliance at that time, he has effectively waived his challenge to the alleged noncompliant step-respondent. Thus, we consider this issue moot.²

¹Grievance Procedure Manual § 6.3.

²We will comment, however, that based on a review of the agency's designated step-respondents on EDR's website, the grievant has not presented sufficient indication that a noncompliant step-respondent was used. The grievant asserts that the proper step-respondent should have been the District Administrator. The agency's list of designated step-respondents for District Office and Residency employees indicates that the District Administrator is to serve as the third step-respondent.

EDR's rulings on matters of compliance are final and nonappealable.³



Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).