

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: July 25, 2014;  
Ruling No. 2015-3951, 2015-3952; Agency: Department of Corrections; Outcome:  
Grievant Not in Compliance.



*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 2015-3951, 2015-3952  
July 25, 2014

The Department of Corrections (the agency) has requested a compliance ruling related to two grievances filed by the grievant, dated June 10, 2014 and June 12, 2014, respectively. 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 grievances.

FACTS

The grievant initiated two grievances, dated June 10, 2014 and June 12, 2014, with the agency. On or about June 23, 2014, the agency mailed the grievant its first step responses to each grievance. On or about July 10, the agency mailed two letters of noncompliance to the grievant via certified mail, indicating that the agency had not received a response from her regarding either grievance. Additionally, the agency requested a response from the grievant within five workdays upon receipt of the noncompliance letters. Both certified mailings were delivered on July 12, 2014.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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.<sup>2</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, 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

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.


<sup>2</sup> *See id.*

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>3</sup>

In this case, the grievant appears to have failed to advance or conclude her grievances within five workdays of receiving the agency's first resolution step responses, as required by the grievance procedure.<sup>4</sup> Moreover, the agency notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievances.

As the grievant has apparently failed to advance or conclude her grievances in a timely manner, she has failed to comply with the grievance procedure. The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievances dated June 10, 2014 and June 12, 2014, respectively, or advance her grievances to the next step.<sup>5</sup> If she does not, the agency may administratively close the grievances without any further action on its part. The grievances 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).

EDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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Director  
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<sup>3</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>4</sup> See *Grievance Procedure Manual* § 3.1.

<sup>5</sup> The grievant has also filed a dismissal grievance, which has been appointed to a hearing officer with an effective date of July 28, 2014. If the grievant decides to continue with these grievances and take the steps indicated above to do so, EDR must be notified should the parties reach an agreement regarding qualification of either or both grievances at issue here, so that, if the parties desire, the remaining resolution steps could be waived and the grievance(s) could proceed to a consolidated hearing expeditiously along with the pending dismissal grievance. For these matters to proceed in such a consolidated fashion, these steps would need to be taken in very short order.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).