



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2151
(TTY) 711

COMPLIANCE RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2021-5141
August 4, 2020

The Department of Juvenile Justice (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant's February 4, 2020, 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 or about February 4, 2020, the grievant initiated a grievance with the agency. The agency issued a first step response to the grievant on or about February 28. Having received no further response from the grievant indicating whether she wished to advance or conclude the grievance, the agency sent a notice of noncompliance to her by both certified mail and email on July 10. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of her receipt of the notice. The tracking information provided by the agency indicates that the mailed notice of noncompliance was delivered to the grievant's address on July 11.¹ As more than five workdays have elapsed since the grievant received notice of her alleged noncompliance and she has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

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 problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow

¹ For purposes of this ruling, EDR will also assume the grievant received the agency's emailed notice of noncompliance because there is nothing to indicate that it may have been sent to an incorrect email address or was otherwise improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

² *Grievance Procedure Manual* § 6.3.

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 EDR finds that either party to a grievance is in noncompliance, its 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

In this case, the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's first resolution step response, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of her noncompliance and she 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. EDR therefore orders the grievant to correct her noncompliance **within ten workdays of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude the grievance or advance to the second step. 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).

EDR's ruling on matters of compliance are final and nonappealable.⁶

Christopher M. Grab
Director
Office of Employment Dispute Resolution

³ *See id.*

⁴ Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, 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.

⁵ *See Grievance Procedure Manual* § 3.1.

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