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## COMPLIANCE RULING

In the matter of the Virginia Department of Corrections  
Ruling Number 2021-5145  
August 24, 2020

The Virginia Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (DHRM) in relation to the grievant’s April 10, 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 April 10, 2020, the grievant initiated a grievance with the agency.<sup>1</sup> On or about June 22, 2020, the agency mailed a written third-step response to the grievant, which included instructions for advancing or concluding the grievance. By letter dated July 28, 2020, the agency advised the grievant that it had not received her response and advised her to indicate whether she wished to advance or conclude her grievance and return the form to the agency within five workdays.<sup>2</sup> On August 19, 2020, having received no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the grievance.

### DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</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 of any noncompliance in writing and allow five workdays for the opposing party to correct it.<sup>4</sup> If the

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<sup>1</sup> It appears that the grievance was submitted on a form other than the Grievance Form A, but the agency nevertheless accepted the grievance and thereafter provided its management step responses using a Grievance Form A.

<sup>2</sup> The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). Accordingly, for purposes of this ruling EDR will assume the grievant received the agency’s notice of noncompliance sent by regular mail because there is nothing to indicate that it was improperly addressed.

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

<sup>4</sup> *See id.*

opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, which 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.<sup>5</sup>

In this case, the available facts indicate that the grievant did not advance or conclude her grievance within the time limits required by the grievance procedure, and the agency's July 28, 2020 letter effectively notified the grievant of her noncompliance.<sup>6</sup> Moreover, more than two months have passed since the agency issued its third-step response, and no evidence suggests that the grievant has subsequently taken appropriate steps to advance or conclude her grievance.

Therefore, because the grievant has apparently neither advanced nor concluded her grievance at this time, she has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct her noncompliance **within 10 workdays of the date of this ruling** by notifying her human resources office in writing that she wishes to advance or conclude her grievance. If she does not do so, 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 rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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<sup>5</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 to be 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>6</sup> See *Grievance Procedure Manual* § 3.3; *id.* at § 6.3.

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