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**COMPLIANCE RULING**

In the matter of Virginia Commonwealth University  
Ruling Number 2020-5028  
December 23, 2019

Virginia Commonwealth University (the “University”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)<sup>1</sup> at the Department of Human Resource Management (DHRM) in relation to the grievant’s October 18, 2019 grievance. The University 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 October 18, 2019, the grievant initiated a grievance with the University. On November 8, 2019, the University sent to the grievant its first step response in the grievance process.<sup>2</sup> The record reflects no further response or other action by the grievant. By letter dated November 20, 2019 and sent via email and registered mail, the University notified the grievant that she was out of compliance with the response timeline established by the grievance procedure, and it advised her to “respond within five (5) days of receipt of this email if you plan to advance or conclude your grievance by indicating it on the Grievance Form A.”<sup>3</sup> On December 10, 2019, not having received a response from the grievant, the University requested that EDR issue a compliance ruling allowing the University to administratively close the grievance.

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<sup>1</sup> The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

<sup>2</sup> The first step response is a memorandum directed to the grievant, apparently sent to the grievant via email.


<sup>3</sup> EDR notes that, upon receiving notice of noncompliance, the noncompliant party has five **workdays** to correct the noncompliance. See *Grievance Procedure Manual* § 6.3. The grievance procedure defines a “workday” as the “[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action.” *Id.* at § 9. Where the noncompliant party no longer works at the agency, and in the absence of special circumstances, EDR will consider “workdays” to mean regular business days.

## DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>4</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>5</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, 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>6</sup>

In this case, the available facts indicate that the grievant did not advance or conclude her grievance within five business days after the agency emailed its first step response or, subsequently, within five business days of receiving the agency's notice of noncompliance.<sup>7</sup> While this ruling was pending, the grievant confirmed to EDR that she does not intend to pursue the grievance or take any further action in the grievance process. Although the grievant did not formally conclude her grievance using the Grievance Form A itself, based on her stated intentions and continued lack of response, EDR considers this grievance concluded.

EDR's rulings on matters of compliance are final and nonappealable.<sup>8</sup>



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

<sup>5</sup> *See id.*

<sup>6</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>7</sup> *See Grievance Procedure Manual* § 3.1.

<sup>8</sup> *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).