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COMPLIANCE RULING

In the matter of the Virginia Community College System
Ruling Number 2020-5105
June 3, 2020

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to her April 15, 2020 grievance with a college within the Virginia Community College System (“the college”). The grievant seeks a ruling from EDR addressing the appropriate step respondents in this case and the handling of the grievance.

FACTS

On or about April 15, 2020, the grievant initiated a grievance with the institution alleging, in part, retaliation by her former supervisor. As such, the grievant checked the box for not presenting her grievance form to her supervisor, who would normally have been the first-step respondent. The grievance was provided to the grievant’s supervisor’s supervisor, an Associate Vice President, who responded to the grievance as the second-step respondent. For colleges within the Virginia Community College System, the second step is listed as “Vice President,” and third step is listed as “President.” The President of the grievant’s college (the “President”) delegated third step responsibilities for this grievance to a Vice President, who has reached out to the grievant for a meeting. However, the grievant asserts two issues of noncompliance: 1) the second step was not provided by an appropriate person because it came from the Associate Vice President instead of a “Vice President”; and 2) the third step should be with the President and not delegated to the Vice President. Having provided a partial notice of the alleged noncompliance to the President, she now seeks this compliance ruling.

DISCUSSION

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency’s Human Resources Office and is also available on EDR’s website. Each designated step-respondent shall have the authority to provide the grievant with a remedy, subject to the agency head’s

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approval.¹ Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step-respondents. This assures that each agency's management resolution step-respondents are appropriate, known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.

An agency's careful designation of step-respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step-respondents have an important statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step-respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step-respondent and should put any agreement in writing. Absent an agreement between the parties or other special circumstances, the agency must adhere to the designated list of step-respondents. However, there are times when modification from the default steps is appropriate, as is raised in this case.

The grievant's first allegation of noncompliance involves the Associate Vice President serving as the second step. While the title of "Vice President" may differ from "Associate Vice President" within a higher education organization, for purposes of the grievance procedure there is no material distinction in this instance. Accordingly, the Associate Vice President serving as the second step complies with the listing for "Vice President." Further, this progression makes the most sense in this given case. The Associate Vice President is the grievant's supervisor's supervisor and serves as the head of the department within which the grievant works. The Associate Vice President reports directly to the President. Accordingly, there is no other "Vice President" within the grievant's reporting line to serve. EDR finds that the college has complied with the grievance procedure in this regard.

The grievant's second allegation involves the President's delegation of a Vice President to serve as the third step. While a modification to the step respondents would normally require both parties to agree, EDR respects the authority of agency heads² to delegate tasks assigned to them.³ There is no provision of the grievance procedure that required the President to notify and receive EDR's approval for such a delegation.⁴ Accordingly, the President's delegation to the Vice President is compliant with the grievance procedure. While there could be an occasion when step respondent authority is reassigned for an inappropriate purpose, there are no facts indicating such a situation in this case, and the grievant makes no such allegation.

CONCLUSION

For the reasons set forth above, EDR finds that the college is in compliance with the grievance procedure. The grievant's ruling request is respectfully denied. The college is directed to schedule a meeting for the Vice President and the grievant at the third step **within five workdays of the date of this ruling**. If the meeting cannot occur within the next five workdays due to the

¹ See Va. Code § 2.2-3003(D).

² The Presidents of colleges within the Virginia Community College System are the agency head, or "chief executive officer," of their respective college. See Va. Code § 23.1-100.

³ Va. Code § 2.2-604; EDR Ruling No. 2012-3187.

⁴ The grievant appears to refer to a written approval required by Virginia Code Section 2.2-604. As a matter of the grievance procedure, EDR does not agree. To delegate the task, the President would merely need to communicate the task assignment in an appropriate manner.

parties' schedules and the current work environment, a meeting date and time must at least be determined within those five workdays.

EDR's rulings on matters of compliance are final and nonappealable.⁵



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