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**COMPLIANCE RULING**

In the matter of the Virginia Department of Corrections  
Ruling Number 2021-5267  
June 3, 2021

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management to challenge noncompliance regarding the Department of Corrections’ (DOC’s or the agency’s) failure to produce requested documents in Case Number 11678. For the reasons discussed below, the grievant has not presented a basis for intervention by EDR at this time.

FACTS

In Case Number 11678, the grievant has sought certain records from the agency. On April 22, 2021, the hearing officer ordered the agency to produce the records. The hearing officer held a pre-hearing conference with the parties on May 24, 2021, as the agency had yet to produce the records by that time. The hearing officer verbally instructed the agency to produce the records by June 14, 2021. The grievant sought EDR’s intervention the next day, seeking a ruling in her favor due to the agency’s failure to produce the records. While this ruling was pending, the agency produced the requested records to the grievant and hearing officer.

DISCUSSION

A hearing officer’s orders and handling of party noncompliance during the hearing phase must comply with the *Grievance Procedure Manual* and *Rules for Conducting Grievance Hearings*.<sup>1</sup> EDR has authority to review the hearing officer’s compliance in this regard; the sole remedy is to direct the hearing officer to correct noncompliance.<sup>2</sup> Absent evidence that the hearing officer has failed to comply with the grievance procedure, decisions about the management of the hearing phase are generally within the hearing officer’s discretion. Accordingly, in such a case, EDR will not intervene unless there has been an abuse of discretion by the hearing officer.

Shortly after being appointed to Case Number 11678, the hearing officer issued an order requiring the agency to produce the requested records. After being notified that the agency had yet to produce the records, the hearing officer held a pre-hearing conference about the matter. Neither

<sup>1</sup> *Grievance Procedure Manual* §§ 6.3, 6.4.

<sup>2</sup> *Grievance Procedure Manual* § 6.4.

party has presented any specifics as to what occurred during the conference. However, it appears that the hearing officer verbally ordered the agency to produce the records by June 14. The *Rules for Conducting Grievance Hearings* provide: “A party’s failure to comply with the grievance procedure or an order of EDR or the hearing officer regarding documents may result in the hearing officer ordering sanctions against that party.”<sup>3</sup> As of this date, the agency has complied with the hearing officer’s order. Accordingly, EDR has been presented with no further noncompliance that the hearing officer has failed to adequately address. Further, EDR observes that the hearing officer’s decision to require production by the June 14 deadline would not appear to have materially prejudiced the grievant’s case inasmuch as the hearing in this case is currently scheduled for July 28, leaving the grievant sufficient time to review the requested records in advance of the hearing.

The grievant has additionally requested that a decision be made in her favor in this case due to the agency’s alleged noncompliance. 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 the grievance procedure,<sup>4</sup> we favor 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. The grievant indicates that the agency has been extended leniency that would not be shown to the grievant. The grievant appears to believe that, if she makes a single procedural misstep her grievance will be discontinued. The grievant’s description of how noncompliance is addressed under the grievance procedure is inaccurate. EDR will typically provide both parties with opportunities to come into compliance before making a decision against a party based on noncompliance, regardless of which party has engaged in the noncompliance.<sup>5</sup>

The agency’s actions here do not rise to the level that would justify a finding of substantial noncompliance or the extreme sanction of EDR awarding substantive relief in favor of the grievant at this time. Providing the agency another opportunity to come into compliance with the hearing officer’s order by a specific deadline before considering sanctions appears consistent with EDR’s approach. Accordingly, the relief requested by the grievant is denied.

### CONCLUSION

Based on the foregoing discussion and at this stage of the proceedings, the arguments asserted by the grievant do not provide a basis for EDR to intervene in any compliance matters in this case. EDR’s rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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<sup>3</sup> *Rules for Conducting Grievance Hearings* § IV(F). Potential sanctions are described in Sections III(E) and V(B) of the *Rules*.

<sup>4</sup> Va. Code § 2.2-3003(G).

<sup>5</sup> *See, e.g.*, EDR Ruling No. 2020-4972 (directing the grievant to produce requested documents that had been ordered by a hearing officer, but declining to find substantial noncompliance by the grievant).

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