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**COMPLIANCE RULING**

In the matter of the Department of Corrections  
Ruling Number 2021-5216  
February 25, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management regarding alleged noncompliance with the grievance procedure by the Department of Corrections (the “agency”).

FACTS

On February 1, 2021, the grievant initiated an expedited grievance challenging her receipt of (1) a Group II Written Notice for alleged failure to follow instructions and/or policy, and (2) a Group III Written Notice for alleged gross negligence with a disciplinary demotion and transfer to another institution. The grievant attached to her grievance a request for “all documentation . . . pertaining to both [of] my disciplinary actions . . . .”

According to the grievant, the agency initially forwarded the grievance to a regional administrator for the single-management-step meeting and response. After the grievant apparently received no further response from the agency, she sent a notice of noncompliance to the agency head on or about February 9. In her notice of noncompliance, the grievant stated that the agency had not scheduled the single-management-step meeting within five workdays and that the regional administrator was not the correct single-management-step respondent to address her grievance.

The grievant subsequently requested a ruling from EDR on February 19, 2021, arguing that the agency had not directed her grievance to the appropriate step respondent or scheduled the single-management-step meeting as required by the grievance procedure. On February 22, the grievant provided EDR with a supplement to her ruling request, alleging that the agency had not responded to her request for documents.

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## DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</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 in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</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, 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 an EDR ruling finds that either party to a grievance is in noncompliance, the 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.

### *Single-Management-Step Meeting*

Section 3.4 of the *Grievance Procedure Manual* states that “the procedures that normally apply to the second resolution step apply to the single management step in an expedited grievance.” Accordingly, an agency's single-management-step respondent must schedule a meeting with the grievant “[w]ithin five workdays of [their] receipt of the grievance.”<sup>3</sup> The grievant initiated her expedited grievance on February 1, 2021. After apparently engaging in some initial discussion with management about the appropriate step respondent, the grievant sent a notice of noncompliance to the agency head on or about February 9, arguing that the single-management-step meeting had not been scheduled in a timely manner.

In this case, it is unclear when the correct step respondent actually received the grievance. It seems that the agency initially directed the grievance to a regional administrator. The grievant states in her request for a compliance ruling that, after she sent her notice of noncompliance to the agency, management notified her that the warden at her current institution would respond to the grievance. The grievant, meanwhile, believed that the superintendent at the institution where she worked when she received the Written Notices should respond to the grievance.<sup>4</sup> The parties have now agreed that the superintendent at the grievant's former institution will meet with the grievant and issue the single-management-step response.<sup>5</sup> The parties initially planned to hold the meeting while this compliance ruling was under consideration, but later agreed to postpone the meeting until the ruling has been issued.

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

<sup>2</sup> *See id.*

<sup>3</sup> *Id.* § 3.2.

<sup>4</sup> According to the agency's list of designated step respondents, an employee's Organizational Unit Head is the second-step respondent (for regular grievances) or single-management-step respondent (for expedited grievances). Organizational Unit Heads include, for example, wardens and superintendents. Regional administrators are the agency's third-step respondent, where appropriate. EDR maintains a list of designated agency step respondents at <https://www.dhrm.virginia.gov/employment-dispute-resolution/agencystepsrespondentlist>.

<sup>5</sup> The superintendent appears to be the manager in the best position to respond to the substance of the grievant's challenge to the Written Notices.

Nonetheless, the grievant is correct that the agency failed to direct the grievance to the appropriate step respondent or schedule the single-management-step meeting within five days of when she initiated the grievance. The grievant then notified the agency of its alleged noncompliance. The agency did not fully address the noncompliance raised by the grievant until she requested this ruling from EDR. At this point, however, the parties appear to have reached an agreement about how the grievance will proceed going forward. Accordingly, the agency is directed to contact the grievant to schedule the single-management-step meeting with the superintendent at her former institution **within five workdays of receipt of this ruling.**

#### *Grievant's Request for Documents*

The grievance statutes provide that “[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available upon request from a party to the grievance, by the opposing party.”<sup>6</sup> EDR’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. Just cause is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”<sup>7</sup> For purposes of document production, examples of just cause include, but are not limited to, (1) the documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.<sup>8</sup> The statute further states that “[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance.”<sup>9</sup>

EDR has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner. All such documents must be provided within five workdays of receipt of the request. If it is not possible to provide the requested documents within the five workday period, the party must, within five workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than ten workdays from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or just cause, the withholding party must provide the requesting party with a written explanation of each claim, no later than ten workdays from receipt of the document request.<sup>10</sup>

It appears that the agency has not yet responded to the grievant’s February 1, 2021 request for documents related to the Written Notices challenged in her grievance. Failing to respond in this regard is not compliant with the grievance procedure. The agency is therefore ordered to respond to the grievant’s request for documents in a manner consistent with the grievance procedure **within five workdays of receipt of this ruling.**

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<sup>6</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

<sup>7</sup> *Grievance Procedure Manual* at § 9.

<sup>8</sup> See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

<sup>9</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

<sup>10</sup> *Grievance Procedure Manual* § 8.2.

*Alleged Substantial Noncompliance*

Finally, the grievant appears to argue that the alleged issues of noncompliance discussed above should be considered substantial noncompliance with the grievance procedure and, as relief, she requests “a ruling from EDR in the cases.” 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>11</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 agency’s actions here do not rise to the level that would justify a finding of substantial noncompliance or the extreme sanction of awarding substantive relief in favor of the grievant at this time.

CONCLUSION

Based on the foregoing, the agency is directed to contact the grievant to schedule the single-management-step meeting with the superintendent at her former institution **within five workdays of receipt of this ruling**. The agency is also directed to respond to the grievant’s request or documents **within five workdays of receipt of this ruling**. Nothing in this ruling prevents the parties from delaying the date of the second step meeting until after the grievant has received the documents she has requested from the agency.

EDR’s rulings on matters of compliance are final and nonappealable.<sup>12</sup>

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<sup>11</sup> Va. Code § 2.2-3003(G).

<sup>12</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).