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**COMPLIANCE RULING**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling Number 2021-5231  
March 19, 2021

The Department of Behavioral Health and Developmental Services (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s February 8, 2021 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 February 8, 2021, the grievant initiated a grievance with the agency.<sup>1</sup> The following day, February 9, the grievant resigned from her position with the agency.<sup>2</sup> The first step response was emailed to the grievant on February 18; the grievant replied to the message on February 21 confirming her receipt of the response. Having received no further response from the grievant after February 21, the agency then sent, also via email, a notice of noncompliance to her on March 2.<sup>3</sup> In its notice of noncompliance, the agency requested a response from the grievant within five workdays of her receipt of the notice. As more than five workdays have elapsed since the agency notified the grievant of her alleged noncompliance and the grievant has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

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<sup>1</sup> Although the Grievance Form A is dated February 5, 2021, the grievant submitted it to the agency by email on February 8.

<sup>2</sup> The grievant appears to have submitted a letter of resignation on or about February 4, although the letter itself is undated. The date the grievant notified the agency of her intent to resign is immaterial to EDR’s analysis of the compliance matter at issue in this case.

<sup>3</sup> For purposes of this ruling, EDR will assume the grievant received the agency’s emailed notice of noncompliance because there is nothing to indicate that it may have been sent to an incorrect email address or was otherwise improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee).

## 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 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>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, 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 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 grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the agency's first resolution step response, as required by the grievance procedure.<sup>7</sup> Moreover, the agency notified the grievant of her noncompliance and she has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct her noncompliance **within ten workdays of the date of this ruling** by notifying the agency's human resources office in writing that she wishes to either conclude the grievance or advance to the second step. If she does not, 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>8</sup>

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

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

<sup>6</sup> 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 procedural rules, 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 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).