

Summary: Compliance-Resolution Steps; Ruling Date: May 23, 2002; Ruling #2002-033; Agency: University of Virginia; Outcome: Agency in compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Employment Dispute Resolution**

**COMPLIANCE RULING OF DIRECTOR**

In the matter of University of Virginia  
Ruling Number 2002-033  
May 23, 2002

**ISSUES:**

(1) Can the agency be found to be out of compliance with the grievance procedure for allegedly failing to provide the grievant with requested documentation? (2) Is the second management step respondent's written reply in compliance with the grievance procedure?

**RULING:**

The agency cannot be found to be out of compliance with the grievance procedure with respect to either issue. The parties are advised that the grievant, within five workdays of receipt of this ruling, has the option to conclude her grievance or advance to the next step. This Department's rulings on matters of compliance are final and nonappealable.<sup>1</sup>

**EXPLANATION:**

(1) The grievance statute provides that "[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to actions grieved shall be made available upon request from a party to the grievance, by the opposing party."<sup>2</sup> This Department's interpretation of the mandatory language "shall be made available" is that absent just cause, all relevant grievance-related documentation *must* be provided.

Further, the grievance procedure requires that parties first communicate with each other about the alleged noncompliance, and resolve any compliance disputes voluntarily, without this Department's involvement. Specifically, a party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the agency fails to correct the alleged noncompliance, the grievant may request a compliance ruling from this Department.<sup>3</sup>

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<sup>1</sup> See Va. Code § 2.2-3003(G).

<sup>2</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2, page 21.

<sup>3</sup> See *Grievance Procedure Manual*, § 6.3, page 17 (describing the process a party must follow to remedy alleged noncompliance).

On January 14, 2002, the grievant initiated a grievance challenging her receipt of a Group I Written Notice (Notice) and alleging retaliation. Further, the grievant claims that she received only the Notice cover and not the attachment that outlined the specifics of the alleged offense. The agency asserts that, after a reminder from the site personnel officer on January 15, 2002, the supervisor hand-delivered the Notice's attachment to the grievant and placed it on her desk. The grievant denies that she has been given the Notice's attachment. Even assuming however, that the grievant had not been given the attachment, this Department is unable to conclude that the agency is non-compliant. The grievant provided no evidence that she followed the required process referenced above for correcting the agency's alleged noncompliance. Furthermore, the agency is and has been willing to immediately provide the attachment to the grievant, but she has refused to accept it.

(2) The grievance statutes provide that "upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof."<sup>4</sup> Each respondent must provide a written response on the grievance "Form A" or attachment. The response must address the issues and the relief requested and should notify the employee of her procedural options.<sup>5</sup> The grievance procedure does not require the respondent's written reply to specifically address each assertion advanced by the grievant. The respondent's reply need only address the issues and relief identified by the grievant on the "Form A." In this case, the written response addresses both the issues identified and the relief requested by the grievant on her "Form A."

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<sup>4</sup> Va. Code §2.2-3003(D).

<sup>5</sup> See *Grievance Procedure Manual*, §§3.1-3.3, pages 8 and 9.