

Summary: Compliance-Resolution Steps; Ruling Date: June 5, 2002; Ruling #2002-054;  
Agency: Virginia Polytechnic Institute and State University; Outcome: Grievant In  
Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Virginia Polytechnic Institute and State University  
Ruling Number 2002-054  
June 5, 2002

The grievant has requested a compliance ruling in the November 9, 2001 grievance she initiated with Virginia Polytechnic Institute and State University. The grievant claims that the University is in noncompliance because she has yet to get a response from management regarding the issues raised by her grievance. The University asserts that it has not responded to her grievance because the grievant filed it with the wrong step respondent. For the reasons discussed below, we conclude that the grievant is entitled to a face-to-face meeting with the University's third step respondent.

**FACTS**

On November 9, 2001, the grievant initiated a grievance with the third step respondent alleging retaliation by her immediate supervisor and his supervisor, who also serves as the University's second step respondent. On November 28, 2001, the grievant sent a letter of non-compliance to the agency head, the University President. On December 6, 2001 the President responded by stating that the grievance Form A had been sent back to the grievant because it had not been properly filed, and by directing her to forward the grievance to the second step respondent. On December 20, 2001, the agency notified the grievant of her non-compliance, and informed her of the options available when a grievance alleges retaliation by the second step respondent. On December 21, 2001, the human resource officer notified the grievant by email that the grievance process would be stayed if the grievant wished to request a compliance ruling from this Department. On February 15, 2002, the grievant notified the University that she would

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pursue her grievance and seek guidance from this Department. On February 22, 2002 the grievant requested a compliance ruling from this Department.

### 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 purported noncompliance, and resolve any compliance problems voluntarily without this Department'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. If the agency fails to correct the alleged noncompliance, the grievant may request a ruling from this Department. Should this Department find that the agency violated a substantial procedural requirement and that the grievance presents a qualifiable issue, this Department may resolve the grievance in the grievant's favor unless the agency can establish just cause for its noncompliance.

The grievant asserts that she initiated her grievance with the correct respondent, because her grievance claims retaliation by her supervisor and by her supervisor's supervisor.<sup>2</sup> The grievant also asserts that the agency failed to comply with the grievance procedure because her Form A was returned to her without a response. The agency asserts that the Form A had been filed with the wrong respondent and had to be presented to the second step respondent, not the third. The applicable provision in the Grievance Procedure Manual states the following:

In the event that an employee alleges retaliation...by an individual who would otherwise serve as the agency's second step respondent, the employee may...waive the face-to-face meeting with the original second step respondent and receive only a written second step response to the grievance. If the employee elects to waive the face-to-face meeting with the original second step respondent, the employee must be allowed to meet with the third step respondent.<sup>3</sup>

Thus, in this case, in claiming retaliation by the second step respondent, the grievant has the option of waiving the face-to-face meeting with the second step

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<sup>1</sup> See *Grievance Procedure Manual* § 6, pages 16-18.

<sup>2</sup> The grievant transferred to a new supervisor a few days before filing her grievance. Thus, technically one could argue that she should have initiated her grievance with her new supervisor. See *Grievance Procedure Manual* § 2.4 page 7 (“[a]s a general rule, an employee must initiate a grievance with the first step respondent, who is usually his immediate supervisor”). However, she decided to file with her former chain of command because the disputed actions involved the annual performance evaluation conducted by the former supervisor. And at this state, little purpose would be served by requiring her to refile in a different chain of command with her current supervisor as the first step respondent.

<sup>3</sup> *Grievance Procedure Manual* § 3.2, page 9.

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respondent, getting a written response instead, and then advancing to the third step for a face-to-face meeting.

Therefore, since it is apparent from the facts that the grievant wants to exercise her waiver option, within five workdays of receipt of this ruling, the agency must provide a written response from the second step respondent. Upon receipt of the written response, the grievant may conclude or advance to a face-to-face meeting with the third step respondent. This Department's rulings on matters of compliance are final and nonappealable.<sup>4</sup>

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<sup>4</sup> Va. Code § 2.2-1001(5).