

Issue: Compliance/5-Day rule; Ruling Date: October 18, 2002; Ruling #2002-177;
Agency: Virginia Community College System; Outcome: agency in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Northern Virginia Community College
Ruling Number 2002-177
October 18, 2002

The agency has requested a compliance ruling regarding the administrative closure of the grievant's August 7, 2002 grievance.

FACTS

The grievance was initiated on August 7, 2002, challenging a Written Notice. On August 17, 2002, the first step response was mailed to the grievant. The grievant failed to advance or conclude her grievance. On August 27, 2002, the agency mailed a notice of noncompliance to the grievant regarding her failure to advance or conclude her grievance, and giving her another five work days to do so. The grievant failed to respond. On September 17, 2002, the agency requested that this Department administratively close the grievance based on the grievant's alleged refusal to accept certified mail delivery of the August 27, 2002 noncompliance letter.

DISCUSSION

The grievance procedure requires that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, before requesting this Department's involvement.¹ 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 grievant is the noncompliant party and fails to correct the alleged noncompliance, this Department has long held that the agency may administratively close the grievance by notifying the grievant in writing (i) that the

¹ *Grievance Procedure Manual*, § 6, pages 16-18.

grievance has been administratively closed, and (ii) that the grievant may challenge the closing of her grievance by requesting a compliance ruling from this Department.²

The agency attempted to notify the grievant of the alleged non-compliance via a letter dated August 27, 2002 sent by certified mail. The U.S. Postal Service made an unsuccessful attempt to deliver the letter on August 28, 2002. The letter was ultimately returned, unclaimed, to the agency on September 16, 2002.

Because the grievant did not respond to the agency's August 27 notice of noncompliance, the agency is now free to close the grievance. The grievant is advised that she may challenge the closing of her grievance by requesting a compliance ruling from this Department.³ However, this Department will re-open her grievance only upon a showing of "just cause" for her delay in advancing it.⁴ Further, any request from the grievant to reopen her grievance must be made, in writing, to this Department within 5 workdays of receipt of this ruling.

Claudia T. Farr
Director

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² *Grievance Procedure Manual*, § 6.3, page 17; See also, Department of Employment Dispute Resolution (EDR) Ruling No. 2002-101.

³ *Id.*

⁴ "Just cause" is defined as "a reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual*, § 9, page 24.