

Issue: Compliance/5-day rule; Ruling Date: February 3, 2005; Ruling #2005-942;
Agency: Department of Juvenile Justice; Outcome: grievant must notify agency within 5 days regarding advancing grievance or concluding



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Number 2005-942
February 3, 2005

The grievant through her representative has requested a compliance ruling regarding her grievance initiated with the Department of Juvenile Justice (DJJ or the agency) on October 13, 2004. The grievant claims that the agency has failed to provide her with a timely third-step response and as such, the agency is out of compliance with the grievance procedure.

FACTS

The grievant is employed as a Rehabilitation Counselor II with DJJ. On September 15, 2004, the grievant was issued a counseling memorandum (reprimand) for failure to follow policy.¹ Subsequently on October 13, 2004, she initiated a grievance challenging that based upon her purported offense, the written counseling was overly severe. The grievance was unresolved through the first and second resolution steps and advanced to the third-step respondent on November 29, 2004. The grievant failed to receive a written response within the mandated five workday time period. Therefore, on December 20, 2004, the grievant's representative sent a letter of non-compliance to the agency head for the third-step respondent's failure to provide a timely response. The agency received the notice by fax on the same date. The third-step response was forwarded on January 3, 2005 and received by the grievant on January 10, 2005. The request for a compliance ruling was received at EDR on January 4, 2005.

DISCUSSION

The grievance procedure requires both parties to address procedural non-compliance through a specific process.² That process assures that the parties first communicate with each other about the non-compliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, the party claiming non-compliance must notify the other party in writing and allow five workdays for the opposing party to correct any non-compliance.³ For example, if the grievant

¹ The grievant was counseled for handwriting, rather than typing, a Ward Inter-Facility Privilege Form that was signed by the Superintendent and forwarded outside the facility.

² *Grievance Procedure Manual*, § 6.

³ *Id.*

believes that an agency has not provided its third-step response within five workdays (as the grievant believed in this case), a grievant must notify the agency head of the alleged non-compliance.

Before seeking a compliance ruling from this Department, the grievant must allow the agency five workdays after receipt of the written notice to correct any non-compliance. If after five workdays the grievant believes that the agency has failed to correct the alleged non-compliance, the grievant may request a ruling from this Department. Furthermore, 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 non-compliance.

Here, it is undisputed that the third-step respondent failed to provide a written response within the mandated five workday time period. As such, DJJ has failed to comply with the requirements of the grievance procedure. However, while this Department does not condone DJJ's non-compliance, in this case, it responded to the grievant's written notice of non-compliance, and any harm that may have accrued to the grievant has been cured by its subsequent third management resolution step-response dated January 3, 2005. As such, the issue to which the grievant now objects has essentially been corrected. More importantly, the grievant has not cited any prejudice suffered as a result of the agency's non-compliance.⁴

Accordingly, within five workdays of receipt of this ruling, the grievant must notify the agency whether she wishes to conclude her October 13, 2004 grievance or advance it to the qualification phase. This ruling does not make a determination about the merits of the October 13, 2004 grievance, only that it is now in compliance with the grievance procedure. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

⁴ Further, if a party has corrected any purported non-compliance prior to this Department's (EDR) receipt of a ruling request, we typically consider the non-compliance to be corrected and, thus, there is no reason for EDR to take further action. In this case, the third-step response was forwarded on January 3, 2005 and the ruling request was received by this department on January 4, 2005.

⁵ Va. Code § 2.2-3003 (G).

February 3, 2005
Ruling #2005-942
Page 4