

Issue: Compliance/5 day rule of grievance procedure; Ruling Date: January 30, 2006;
Ruling #2006-1258; Agency: Department of Social Services; Outcome: request is
premature



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Social Services
Ruling No. 2006-1258
January 30, 2006

The grievant has requested a compliance ruling in the grievance that she initiated on June 3, 2005 with the Department of Social Services (DSS or the agency). The grievant contends that the agency has violated the grievance procedure by failing to respond to her request for qualification of her grievance for hearing.

FACTS

The grievant was employed by the agency as a Fiscal Technician Senior. On June 3, 2005, the grievant initiated a grievance challenging a Notice of Improvement Needed. She had previously initiated two other grievances against the agency. The first of these grievances, initiated on March 10, 2005, alleged workplace harassment, "job bullying" and sexual and religious discrimination. The second grievance, initiated April 25, 2005, alleges retaliation.

After the parties failed to resolve the June 3, 2005 grievance at the first management resolution step, the grievant advanced that grievance to the second resolution step. The grievant asked to waive the second-step meeting pursuant to § 3.2 of the *Grievance Procedure Manual*, which provides that where a grievant "alleges retaliation or discrimination by an individual who would otherwise serve as the agency's second-step respondent," the grievant may waive the second-step meeting. The agency denied the grievant's request.

The grievant subsequently requested a compliance ruling from this Department on the agency's failure to allow her to waive the second-step meeting. On October 14, 2005, this Department ruled that the agency had failed to comply with the grievance procedure and directed that the grievant be allowed to waive the face-to-face meeting with the second-step respondent.¹

The second-step respondent provided the grievant with a written response denying her request for relief on or about October 29, 2005. The grievant then advanced her

¹ EDR Ruling No. 2006-1132.

grievant to the third resolution step, where the third-step respondent also denied her request for relief. By letter dated November 28, 2005, the third-step respondent returned the grievance to the grievant. The grievant subsequently checked the box on her Grievance Form A requesting qualification of her grievance for hearing. She states that on December 1, 2005, she personally hand-delivered the Form A to the agency's main office, where she gave it to the security guard on duty.² The agency's employee relations manager denies that he received the grievant's Form A on or after December 1st.

On December 30, 2005, after she had not received any response to her request for qualification, the grievant hand-delivered written notice of noncompliance to the agency head. This letter did not specifically identify any allegedly noncompliant conduct by the agency. Rather, the letter simply advised the agency that it was out of compliance and had 5 business days to come into compliance. By certified letter dated January 11, 2006, the agency advised the grievant that it was unclear from her December 30th letter why she believed the agency was out of compliance. The agency also informed the grievant that it had no record of receiving any documents from her after the third-step response on November 28, 2005.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the 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 or the opposing party to correct any noncompliance.⁴ If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.

For a letter of noncompliance to satisfy this procedural prerequisite, it must, at a minimum, provide clear notice that the party writing the letter considers the other party's conduct to constitute noncompliance, and it must advise the opposing party of the specific conduct which is alleged to be noncompliant. Although no specific wording is required, the letter must be sufficiently direct and unambiguous that it fulfills its purpose, which is to give notice to the opposing party and allow that party an opportunity to cure the noncompliance within five workdays.⁵ In this case, the grievant's December 30, 2005 letter does not specifically advise the agency of any specific conduct alleged to be noncompliant. Because the grievant's December 30th letter fails to give adequate notice of noncompliance, her request for a compliance ruling is premature.

² The grievant has provided a signed statement by an individual the grievant identifies as a security officer, in which the individual acknowledges that she has received a letter from the grievant and that the letter was to be delivered to the agency head.

³ *Grievance Procedure Manual* § 6.1.

⁴ *Grievance Procedure Manual* § 6.3.

⁵ See EDR Ruling No. 2006-1183.

We recognize, however, that this is the second compliance ruling requested in this matter, and that the underlying grievance was initiated on June 3, 2005, more than six months prior to the date of this ruling. Therefore, in order to expedite the processing of this grievance, this Department will provide to the agency's Employee Relations Manager a copy of the grievant's Form A.⁶ The agency will then have five workdays from receipt of the Form A to make a determination on the grievant's request for qualification.⁷ The agency's failure to timely comply with this directive may result in this Department qualifying the grievant's claim for hearing and/or granting substantive relief to the grievant, unless the agency can show just cause for its failure.

This Department's rulings on matters of compliance are final and nonappealable⁸.

Claudia T. Farr
Director

Gretchen M. White
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⁶ This Department will only provide the agency with a copy of the Form A itself. If the grievant wishes to provide any additional portion of the grievance record or any other materials to the agency, she is responsible for doing so in a timely manner.

⁷ This Department will fax a copy of the Form A to the agency's Employee Relations Manager, using the fax number for the agency's Division of Human Resource Management. EDR will consider successful transmission of the document to constitute receipt by the agency.

⁸ Va. Code § 2.2-1001(5).