

Issue: Compliance/Grievance Procedure/Documents; Ruling Date: April 6, 2007;
Ruling #2007-1600; Agency: Department of Corrections; Outcome: Agency in
compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2007-1600
April 6, 2007

By an undated letter received by this Department on March 15, 2007, the grievant requests a compliance ruling. In the ruling request, the grievant claimed that the Department of Corrections (DOC or the agency) had failed to provide him with requested documents related to his February 6, grievance.

FACTS

On February 6, 2007, the grievant initiated a request for “all documentation relating to [his] case.” The previous day, he had received a Group III Notice with termination for alleged “sexual misconduct with offenders or staff.” By a letter dated February 16, 2007, the grievant informed the Warden that he had not yet received the requested documentation. The agency responded via an undated letter that it would take some time to collect the documents. The agency subsequently mailed the grievant the requested documents, which he received on March 15, 2007, the day that this Department received the grievant’s ruling request.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ 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 for the opposing party to correct any noncompliance.² If the party fails to correct the

¹ *Grievance Procedure Manual* § 6.3.

² *Grievance Procedure Manual* § 6.3.

alleged noncompliance, the complaining party may request a ruling from this Department. Should EDR find that the agency violated a substantial procedural requirement, EDR may render a decision against the noncomplying party on any qualifiable issue, unless the noncomplying party can establish just cause for its noncompliance; rendering such a decision is reserved for the most egregious of circumstances. For instance, if a party ignores a previous compliance order from EDR, a ruling in favor of the opposing party may be granted.

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that he first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure. Instead, the grievant notified the institution head, the Warden. Furthermore, the agency has provided the grievant with the requested documents.

During the course of the investigation for this ruling, the grievant reported that he is not satisfied with the agency's response because the agency redacted the documents it provided. Because the grievant has not first notified the DOC agency head of the alleged non-compliance and given the agency five workdays to correct the purported non-compliance, a ruling from this Department regarding the redaction of the documents would be premature. If the grievant remains dissatisfied with the agency's response after he has informed the agency head (not solely the Warden) of the purported noncompliance and allowed five workdays for correction, he may seek a ruling request on the redaction issue from this Department.

This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

³ Va. Code § 2.2-3003(G).