

Issue: Compliance/grievance procedure/5-day rule; Ruling Date: October 4, 2006;
Ruling #2007-1445; Agency: Virginia Commonwealth University; Outcome: grievant
out of compliance – grievant ordered to correct compliance within 10 days of date of
ruling



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling No. 2007-1445
October 4, 2006

The grievant has requested a compliance ruling in her July 11, 2006 grievance with Virginia Commonwealth University (VCU or the agency). In particular, the grievant challenges VCU's administrative closure of her July 11th grievance.

FACTS

Prior to her termination, the grievant was employed as an Emergency Communications Coordinator II with VCU. On July 11, 2006, the grievant initiated a grievance challenging her receipt of a Group III Written Notice with termination for violating the state's workplace violence policy. On July 22, 2006, the grievant received the second management resolution step response. Because the grievant never advanced or concluded her grievance within five work days of receiving the second management resolution step response, on August 1, 2006, the agency sent a notice of noncompliance to the grievant by certified and regular U.S. mail. When the grievant failed to respond to the notice of noncompliance, VCU sent the grievant another letter on August 9, 2006 advising her that her grievance had been administratively closed. The grievant now seeks to have her July 11, 2006 grievance reopened.

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 (EDR'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 opposing party fails to correct the noncompliance within this five-day period, the party claiming

¹ *Grievance Procedure Manual*, § 6.3.

² *Id.*

noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for its delay in conforming to EDR's order.³

In this case, the grievant failed to advance or conclude her grievance within five work days of receiving the second management resolution step response. Further, the agency appears to have notified the grievant of her noncompliance and gave her an additional five work days to correct the noncompliance. At the expiration of the five work days, VCU sent the grievant a letter stating that her July 11th grievance had been administratively closed. In the past, this Department permitted an agency to administratively close a grievance once the grievant was notified of her alleged noncompliance and failed to respond within the mandated five work days of the notice of noncompliance.⁴ However, in the interest of fairness to all parties, this Department modified its former practice regarding how and when an agency may administratively close a grievance for noncompliance with the five work day rules.⁵ Our current rule states that an agency may not administratively close a grievance for failure to comply with the five work day rule without this Department's express permission to do so.⁶

As such, this Department concludes that VCU inappropriately administratively closed the grievant's July 11, 2006 grievance. However, this does not change the fact that the grievant has failed to advance or conclude her grievance in a timely manner and as such, she has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by either concluding her grievance or requesting that the agency head qualify her grievance for hearing. If she does not, the agency may administratively close her grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ See e.g., EDR Ruling ## 2001-228, 2002-177 and 2002-101.

⁵ The current rule is consistent with the published party noncompliance provisions of the grievance procedure. See *Grievance Procedure Manual* § 6.3

⁶ See e.g., EDR Ruling ## 2006-1211, 2006-1185, 2006-1144, 2006-1212, 2006-1240 and 2007-1396. See also Frequently Asked Question #29 on the EDR website found at: www.edr.virginia.gov.

This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁷ See Va. Code § 2.2-1001(5).