

Issue: Compliance/ 5-day rule; Ruling Date: October 24, 2006; Ruling #2007-1454;  
Agency: Department of Mental Health, Mental Retardation and Substance Abuse  
Services; Outcome: premature request



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Mental Health, Mental Retardation  
and Substance Abuse Services  
Ruling No. 2007-1454  
October 24, 2006

The Department of Mental Health, Mental Retardation and Substance Abuse Services (or the agency) seeks to administratively close the grievant's September 8, 2006 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

**FACTS**

The grievant is employed as a Trades Helper with the agency. On September 8, 2006, the grievant initiated a grievance challenging the Group II Written Notice. On or about September 14, 2006, the first resolution step response was sent to the grievant. Because the grievant never advanced or concluded his grievance within five work days of receiving the management resolution step response, on September 22, 2006, the agency sent to the grievant a letter closing his grievance.

**DISCUSSION**

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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.<sup>2</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming 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. An agency

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<sup>1</sup> *Grievance Procedure Manual*, § 6.3.

<sup>2</sup> *Id.*

may not, however, close an allegedly non-compliant grievance without first seeking a ruling from the EDR Director.<sup>3</sup> Before seeking such a ruling, the agency must inform the grievant, in writing, of the noncompliance and allow the grievant 5 workdays after receipt of the written notice to correct the noncompliance.<sup>4</sup> If the grievant does not correct the noncompliance within 5 workdays, then the agency may seek a compliance ruling from the EDR Director.<sup>5</sup> If the EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the non-compliance.<sup>6</sup> If it is not corrected within the designated timeframe, the agency may then close the grievance.<sup>7</sup>

In this case, the grievant has failed to advance or conclude his grievance within five work days of receiving the first management resolution step response. However, the agency did not notify the grievant of the noncompliance and give him five days to correct it. Accordingly, the request to close the grievance is premature and the agency must notify the grievant that he is out of compliance and allow him 5 workdays to advance or conclude his grievance. If he does not, then the agency may seek a ruling from this Department.

The grievant should note: If he no longer desires to continue with his grievance he should notify, in writing, the agency's human resource office.

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Claudia T. Farr  
Director

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<sup>3</sup> See Frequently Asked Grievance Question #29 on EDR's website at <http://www.edr.virginia.gov/faqs.htm>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*