

Issue: Compliance/grievance procedure/respondent steps; Ruling Date: November 21, 2006;
Ruling #2007-1484; Agency: Department of Corrections; Outcome: agency not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling No. 2007-1484
November 21, 2006

The grievant has asked for a compliance ruling from this Department. He alleges that the Department of Corrections (DOC or the agency) has failed to comply with the grievance procedure by refusing to have the appropriate second-step respondent meet with him.

FACTS

On September 2, 2006,¹ the grievant initiated an expedited grievance challenging a Group III Written Notice and seeking reinstatement from the resulting termination. The agency has offered to have an assistant warden meet with the grievant as the second-step respondent. The grievant seeks a meeting with the appropriate second-step respondent, the chief warden of the facility, rather than another official designated by the warden. Consequently, on October 30, 2006, the grievant sent a letter to the agency head providing notice of this alleged noncompliance, which was received on November 1, 2006. On November 8, 2006, the agency responded to the notice, in a letter to the grievant, that the chief warden of the facility designated the "Warden Seniors" to respond to grievances at the second resolution step. As of November 13, 2006, the date of the grievant's request for a compliance ruling to this Department, the agency had failed to correct the alleged noncompliance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the purported noncompliance, and resolve any compliance problems voluntarily without 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. If the party fails to correct the alleged noncompliance, the other party may request a ruling from EDR. 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

¹ The handwritten date on the grievant's Form A is difficult to read. Therefore, it may be possible that the actual date of initiation is a date other than September 2, 2006. However, the date the grievance was initiated is immaterial to the grounds of this ruling.

² See *Grievance Procedure Manual* § 6.3.

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.

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency's Human Resources Office and is also available on EDR's website. Each designated step respondent shall have the authority to provide the grievant with a remedy, subject to the agency head's approval.³ Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step respondents. This assures that each agency's management resolution step respondents are appropriate, are known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.

An agency's careful designation of step respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step respondents have an important statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step respondent and should put any agreement in writing.

In the present case, the agency has attempted to substitute an incorrect second-step respondent after the grievant submitted his expedited grievance. The agency argues that its substitution is proper because the approved second-step respondent, the chief warden of the facility, designated an assistant warden to be the second-step respondent in such grievances. The agency did not obtain the grievant's consent to the substitution and has provided no supporting grounds for the change. This Department does not condone an agency's conduct of unilaterally substituting step respondents.⁴ Consequently, it is this Department's ruling that the agency is in noncompliance. If in the future the agency wishes formally to change its list of step respondents, a request must be provided to EDR for approval. However, the current list on file with EDR provides that the second-step respondent for DOC shall be the "organizational unit head," i.e., the chief warden of the facility at issue.

CONCLUSION

For the reasons discussed above, this Department concludes that the agency failed to comply with the grievance procedure by unilaterally substituting an unapproved second-step respondent. The agency is directed to have the approved second-step respondent, i.e., the chief warden of the facility, meet with the grievant face-to-face within five workdays of receipt of this ruling and provide a written response to the grievance within five workdays of the meeting.⁵

³ See Va. Code § 2.2-3003(D).

⁴ See EDR Ruling No. 2005-951.

⁵ See *Grievance Procedure Manual* § 3.2.

This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁶ Va. Code §§ 2.2-1001(5), 2.2-3003(G).