

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling
Date: May 2, 2008; Ruling #2008-2002; Agency: College of William & Mary;
Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of College of William & Mary
Ruling No. 2008-2002
May 2, 2008

The College of William & Mary (the College) seeks a compliance ruling regarding the grievant's March 3, 2008 grievance. The College alleges that the grievant has failed to comply with the grievance procedure by failing to respond to calls to reschedule the second step meeting.

FACTS

On March 3, 2008, the grievant initiated his expedited grievance concerning a demotion. According to the College, the second step meeting was scheduled for March 12, 2008. However, the meeting was allegedly cancelled at the grievant's request. The College states that it made "several attempts" to contact the grievant, but the calls were not returned. On March 14, 2008, the College mailed the grievant a letter asking that the grievant contact the second step-respondent to schedule the meeting. This letter also notified the grievant of the alleged noncompliance. The College states that the grievant has failed to respond to that letter and the prior calls. Because of the grievant's nonresponsiveness, the College seeks a compliance ruling.¹

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 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.³ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming

¹ There is no indication that the College provided the grievant with a copy of its request for a compliance ruling, as is required by the grievance procedure. *Grievance Procedure Manual* § 6.3. This Department cautions all participants in the grievance process to be sure opposing parties are aware of ruling requests made to EDR by copying them on correspondence.

² *Grievance Procedure Manual* § 6.3.

³ *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 the delay in conforming to EDR's order.⁴

The *Grievance Procedure Manual* provides that “[w]ithin 5 workdays of the second-step respondent’s receipt of the grievance, the second-step meeting must be held.” The College alleges that the grievant has violated this portion of the grievance procedure by asking to reschedule the meeting and then failing to respond to the College’s inquiries to reschedule. Although there is no specific provision in the grievance procedure expressly requiring a grievant to cooperate with the scheduling of the second step meeting, certainly such cooperation is expected. Nonresponsiveness by parties to a grievance does not support the purpose of the grievance process to resolve workplace disputes fairly and promptly.⁵ Therefore, the grievant should contact the College as soon as possible after receipt of this ruling to either provide his availability for a rescheduled second step meeting or notify the College’s human resources office that he wishes to conclude his grievance. However, if the grievant continues to be nonresponsive to the agency’s past requests to reschedule the second step meeting, the agency could simply select a meeting date and notify the grievant. If the grievant does not appear for the meeting, the agency could then follow at least two different courses of action. First, the second step-respondent might simply respond to the grievance in writing without the input of the grievant during a face-to-face meeting.⁶ Second, assuming that the College desires to meet with the grievant,⁷ the College could provide the grievant a notice of noncompliance for failure to appear at the scheduled meeting and, if the situation is not

⁴ 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.

⁵ See *Grievance Procedure Manual* § 1.1.

⁶ If the College provides a response without first meeting with the grievant, however, the College will waive the right to allege noncompliance by the grievant in not coming to the meeting. EDR has never directly ruled on the issue of whether a grievant’s failure to come to a scheduled second step meeting would be noncompliance. However, Number 13 of the Frequently Asked Grievance Questions on EDR’s website provides that “any party to a grievance has a right to insist on the second-step meeting, and if either party demands it, then the second-step meeting generally must take place.” Frequently Asked Grievance Questions, No. 13, <http://www.edr.virginia.gov/faqs.htm>.

⁷ The parties are not required to conduct a second step meeting if both the grievant and management agree to waive the second step meeting. See *id.*

corrected, appeal to EDR for a compliance ruling consistent with Section 6.3 of the *Grievance Procedure Manual*.⁸

CONCLUSION

Based on the foregoing, the grievant's conduct does not yet amount to noncompliance with the grievance procedure. This Department's rulings on matters of compliance are final and nonappealable.⁹

Claudia T. Farr
Director

⁸ To the extent this second course of action might inadvertently result in the agency waiving the compliance matter by proceeding with the second step meeting before requesting a compliance ruling, as described in EDR Ruling No. 2005-1067, the pertinent portion of that ruling is hereby superseded.

⁹ See Va. Code § 2.2-1001(5).