

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: October 9, 2008; Ruling#2009-2134; Agency: College of William and Mary; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the College of William & Mary
Ruling No. 2009-2134
October 9, 2008

The College of William & Mary (the College) seeks to administratively close the grievant's June 30, 2008 grievance. The College alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

The grievant initiated her expedited grievance, dated June 30, 2008, primarily to challenge her termination. The second step-respondent provided a written response to the grievance on or about July 10, 2008, which the grievant, according to the College, received on July 14, 2008. However, the grievant has failed to return the grievance package to the College to advance or conclude the grievance. Because the grievant never advanced or concluded her grievance within five workdays of receiving the second step response, the College mailed the grievant a notice of noncompliance on August 5, 2008.¹ Because more than five workdays have elapsed since the date of the notice of noncompliance letter, and the grievant has not yet cured the noncompliance, the College seeks a compliance ruling.

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

¹ It does not appear that the grievant received this notice of noncompliance. However, the grievant has apparently received a copy of the College's September 8, 2008 letter to this Department requesting a compliance ruling, which notes the issue of noncompliance. Because the grievant is thus aware of the allegation of noncompliance, and because this ruling provides the grievant with one further opportunity to correct the noncompliance, even if the grievant did not receive the August 5, 2008 letter, this Department will proceed with this ruling.

² *Grievance Procedure Manual* § 6.3.

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 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

In this case, the grievant has failed to advance or conclude her grievance within five workdays of receiving the second resolution step response. Moreover, the College sent the grievant a notice of noncompliance, but the grievant has apparently not advanced or concluded the grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure.⁵ This Department therefore orders the grievant to correct her noncompliance, if she has not already done so, **within ten workdays of the date of this ruling** by notifying her human resources office in writing that she wishes to either conclude the grievance or request qualification of the grievance for hearing. If she does not, the College may administratively close the 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).

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

Claudia T. Farr
Director

³ *Id.*

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* § 2.4.

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