

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: May 11, 2009; Ruling #2009-2279; Agency: University of Virginia Health System; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of University of Virginia Health System
Ruling No. 2009-2279
May 11, 2009

The grievant has asked for a compliance ruling from this Department. She alleges that the University of Virginia (UVA or the University) has failed to comply with the grievance procedure by refusing to have the correct employee act as the first-step respondent. For the reasons set forth below, we find that the University acted in compliance with the grievance procedure.

FACTS

On February 10, 2009, the grievant initiated a grievance challenging her termination from the University. She initiated the grievance with Mr. A, the manager who had issued the discipline resulting in her termination. On or about March 2, 2009, Mr. A, acting as first-step respondent, provided the grievant with the first-step response to her grievance. The grievant, through her attorney, subsequently gave written notice of noncompliance to the University. This written notice alleges that the agency failed to comply with the grievance procedure by having Mr. A act as the first-step respondent, as the grievant contends he was not her immediate supervisor. After the University reaffirmed its position that Mr. A was the appropriate first-step respondent, the grievant requested a compliance ruling from this Department.

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 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 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.² 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.

The University has designated the employee's immediate supervisor as the first-step respondent.³ The grievant contends that Mr. A was not her immediate supervisor and therefore could not act as the first-step respondent. The University asserts that Mr. A is the correct first-step respondent, as he was the "lowest-level manager in [the grievant's] line of supervision" and had taken the disciplinary action being challenged.

Although the person designated as the first-step respondent generally must act in that capacity, there are exceptions to this general rule. In particular, the grievance procedure provides that an employee may initiate his or her grievance with the manager who issued the discipline being grieved.⁴ The manager with whom the grievance was initiated then acts as the first-step respondent, even if that manager is not the grievant's immediate supervisor. In this case, the grievant initiated her grievance with Mr. A because he issued the discipline being grieved. Therefore, Mr. A properly acted as the first-step respondent.

Although the grievant apparently did not intend this consequence in initiating her grievance with Mr. A, in this case the question of remedy is moot. The position of Ms. B, the individual whom the grievant alleges was her immediate supervisor, has been eliminated and the duties of that position have been assumed by Mr. A. We therefore will not direct that Ms. B act on behalf of the University, as Ms. B no longer acts in any supervisor or management capacity with respect to the grievant or with the Center with which the grievant was employed.

² See Va. Code § 2.2-3003(D).

³ The grievant appears to assume that the step respondents are designated on a case-by-case basis. That is not the case. Agencies, including universities, designate step respondents on a one-time basis and those respondents are described on EDR's website (for example, "immediate supervisor" or "Division Director").

⁴ *Grievance Procedure Manual* § 2.4

This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

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