

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 20, 2009; Ruling #2010-2389, 2010-2390; Agency: University of Mary Washington; Outcome: Grievant Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the University of Mary Washington  
Ruling No. 2010-2389, 2010-2390  
August 20, 2009

The University of Mary Washington (the University) seeks to administratively close the grievant's two May 22, 2009 grievances. The University alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievances.

FACTS

The second step-respondent provided written responses to the May 22, 2009 grievances on July 1, 2009, which provided relief to the grievant. Because the grievant had failed to return the grievance packages to the University to advance or conclude the grievances within five workdays of receiving the second step responses, the University states it mailed the grievant a notice of noncompliance on July 14, 2009. Based on the return receipt, the University states that the grievant received the letter on July 24, 2009. Because more than five workdays have elapsed since the grievant's apparent receipt of the notice of noncompliance letter, and the grievant has not advanced or concluded the grievances, the University seeks a compliance ruling.

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. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i)

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

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

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.<sup>3</sup>

In this case, given the grievant has received relief from University management in his May 22, 2009 grievances, it is possible that he is satisfied with the outcomes and does not wish to pursue the grievances further. However, the grievant does not appear to have formally notified the University whether he wishes to advance or conclude the grievances within five workdays of receiving the second resolution step responses. The University appears to have notified the grievant of this alleged noncompliance, but the grievant has not yet cured the issue.

To the extent the grievant has failed to advance or conclude his grievances in a timely manner, he has failed to comply with the grievance procedure.<sup>4</sup> This Department therefore orders the grievant to correct this noncompliance **within ten workdays of the date of this ruling** by notifying the University's human resources office in writing that he wishes to either conclude the grievances or continue to the third step of the grievance process. If the grievant does not do so, the University may administratively close the grievances without any further action on its part. The grievances 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.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> 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.

<sup>4</sup> See *Grievance Procedure Manual* § 3.2.

<sup>5</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).