

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: October 28, 2009; Ruling #2010-2455; Agency: Department of Behavioral Health and Developmental Services; Outcome: Agency Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Behavioral Health and Developmental Services
Ruling No. 2010-2455
October 28, 2009

The grievant has requested a ruling regarding the alleged noncompliance of the Department of Behavioral Health and Developmental Services (the agency) in not responding to the issues raised in her grievance at the second step.

FACTS

While the grievant's receipt of a Written Notice is a central part of her February 13, 2008 grievance, as noted in EDR Ruling No. 2008-1992, this grievance is about much more than just the Written Notice and mandatory training. In the attachments the grievant submitted with her Form A, there are numerous factual issues raised addressing ongoing and unresolved problems between and among members of the workplace. Further discussion about the issues raised by her grievance was included in EDR Ruling No. 2008-2044 and 2009-2076.

Following the requisite meeting, the second step-respondent provided a written response, dated July 9, 2009, which identified and responded to one issue, the Written Notice. The second step response also identifies another issue, described as involving the grievant's concerns about clear instructions and directions regarding her responsibilities. However, the response indicates that "[t]he grievance process will not address her concern." The grievant now seeks a compliance ruling, alleging that the second step-respondent failed to respond to the issues of her grievance.

DISCUSSION

Under the grievance procedure, the second step-respondent must provide a written response within five workdays of the second step meeting absent an agreement between the parties to extend the deadline. The written response must address the issues and relief requested

and should notify the employee of his or her procedural options.¹ While the step-respondent is not required to respond to each and every point or factual assertion raised by the employee, the respondent must address each issue raised and the requested relief.

In her written response, the second step-respondent has only addressed the issue of the Written Notice. The second step-respondent identified a second general issue, but, rather than addressing the grievant's concerns, she stated that "[t]he grievance process will not address her concern." This response is inadequate and noncompliant with the grievance procedure.

Although it might be unclear how to categorize all the specific issues the grievant has raised,² there can be no doubt that she has asserted a number of concerns in her grievance paperwork. Such work-related issues are a proper subject of an employee's grievance³ and, therefore, must be addressed, not simply identified, by the second step-respondent. While the second step-respondent need not respond to every point or factual assertion by the grievant, the grievant has raised issues in her grievance that were disregarded at the second step. Thus, the agency has failed to comply with the grievance procedure.⁴ The grievance must be returned to the second step-respondent for the issues raised by the grievant to be addressed.

The grievant has also noted that the second step-respondent who issued the July 9, 2009 response is no longer employed by the agency. As such, the grievance must be returned to the individual who would currently serve as the second step-respondent in a grievance filed by this grievant. If the parties wish to hold another second step meeting, as the new second step-respondent would not have been involved in the prior meeting, it would be appropriate to do so. If a meeting is held, it must be scheduled within five workdays of the agency's receipt of this ruling. If a meeting is not to be held, a revised second step response must be issued within five workdays of the agency's receipt of this ruling.

Further, the agency is cautioned that this is the second time it has been instructed about responding to the issues raised in this grievance.⁵ Failing to comply with the grievance procedure on this issue in this case again may result in a finding of substantial noncompliance.⁶

This Department's rulings on matters of compliance are final and nonappealable.⁷

¹ *Grievance Procedure Manual* § 3.2.

² To the extent the agency is unclear, the agency could ask that the grievant clarify the specific issues that must be addressed. Such clarification could take place in a re-held second step meeting. *See infra*.

³ *See, e.g.*, Grievance FAQ No. 2, at http://www.edr.virginia.gov/faqs_a.htm.

⁴ *See, e.g.*, EDR Ruling No. 2008-1786; EDR Ruling No. 2004-851; *see also, e.g.*, EDR Ruling No. 2009-2347.

⁵ *See* EDR Ruling No. 2008-1992.

⁶ If a party engages in substantial noncompliance without just cause, this Department has the authority to render a decision against the noncompliant party on any qualifiable issue. *See* Va. Code § 2.2-3003(G). However, this Department will generally only make such an extreme order on the merits of a grievance when a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure.

⁷ *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).

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