

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: March 2, 2010; Ruling #2010-2541; Agency: Department of Behavioral Health and Developmental Services; Outcome: Agency 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. 2010-2541  
March 2, 2010

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. In a letter to this Department dated February 23, 2010, the grievant also addressed additional issues with the second step meeting and the second step-respondent's supplemental response.

FACTS

Following the January 12, 2010 second step meeting, the second step-respondent provided a written response in this grievance, dated January 22, 2010. The grievant sent the agency head a notice of noncompliance on February 2, 2010, alleging that the second step-respondent had failed to address the issues of her grievance. The facility waited for the interim agency head to respond to the grievant's notice of noncompliance, as had been done with another issue of noncompliance raised by the grievant at the second step the prior week. In a February 9, 2010 response, the interim agency head directed the second step-respondent to issue a supplemental response to the grievance within five workdays that addresses the issues/allegations of workplace violence, workplace harassment, and discrimination. The second step-respondent issued such a supplement, dated February 12, 2010, providing further discussion as to the grievant's claims. The grievant seeks a compliance ruling, alleging that the second step-respondent failed to respond to the issues of her grievance. The grievant has also raised her concerns with the second step meeting and the supplemental response.

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 involvement. Specifically, the party claiming noncompliance must notify the other

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<sup>1</sup> *Grievance Procedure Manual* § 6.1.

party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.<sup>3</sup>

### *Second Step Meeting*

The grievant's request for a compliance ruling regarding the conduct of the second step meeting is premature because the grievant has not shown that she first notified the agency head in writing of the alleged violations, as required by the grievance procedure.<sup>4</sup> Because the grievant has not first notified the agency head of the alleged non-compliance and given the agency the opportunity to correct the purported non-compliance, a ruling from this Department regarding the events of the meeting would be premature. However, to assist in the resolution of this long-standing grievance, this Department reviewed the grievant's concerns about the conduct of the meeting. There is nothing in the grievant's allegations that would warrant a finding of noncompliance such that a new second step meeting would be necessary.

### *Written Response*

Under the grievance procedure, the second step-respondent must provide a written response within five workdays of the second step meeting. The written response must address the issues and relief requested and should notify the employee of his or her procedural options.<sup>5</sup> 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.

Although the January 22, 2010 response by the second step-respondent may not have addressed each issue raised by the grievance, the February 12, 2010 supplement appears to respond to the general issues listed by the grievant in the attachment to her grievance. As such, the agency has cured any noncompliance with this new second step response. While the grievant may disagree with how the second step-respondent has answered the issues, it cannot be said that the response does not comply with the requirements of the grievance procedure.<sup>6</sup> Indeed, it appears that the supplemented second step-response has responded to the issues raised in the grievance.

The grievant also requests a ruling on the merits of her grievance due to the agency's alleged noncompliance. 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.<sup>7</sup> However, this Department will generally only make such an extreme order on

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<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Grievance Procedure Manual* § 3.2.

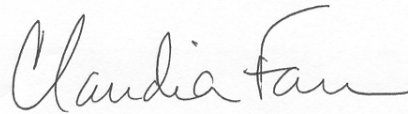
<sup>6</sup> *See id.*

<sup>7</sup> *See* Va. Code § 2.2-3003(G).

the merits of a grievance when a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure.

As to the grievant's allegations in this ruling request, there is no evidence that the agency's handling of her grievance is driven by bad faith. Indeed, it was the interim agency head who directed that the second step-respondent issue a supplemental response to the grievance without this Department's involvement. There is no basis for the Department to award a relief on the merits based on these allegations.

The grievant's ruling request is denied. This Department's rulings on matters of compliance are final and nonappealable.<sup>8</sup>

A handwritten signature in cursive script that reads "Claudia Farr". The signature is written in black ink on a light-colored background.

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Claudia T. Farr  
Director

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<sup>8</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).