

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: March 10, 2010; Ruling #2010-2543; Agency: Department of Motor Vehicles; Outcome: Agency Not In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Motor Vehicles  
Ruling No. 2010-2543  
March 10, 2010

The grievant seeks a compliance ruling regarding her grievance with the Department of Motor Vehicles (the agency). For the following reasons, the grievance must be reopened and allowed to proceed.

FACTS

Following the agency's mistaken closure of this grievance at an earlier stage, which it corrected once the issue was raised by the grievant with this Department,<sup>1</sup> the second step-respondent scheduled a second step meeting, notifying the grievant by mail of the date: January 20, 2010. The letter did not specify a time for the meeting. The grievant states she arrived at the office for the meeting at 8:00 a.m. on January 20, 2010, but was told that the second step-respondent had not arrived. It is unclear whether the grievant waited any period of time for the second step-respondent to arrive. No meeting was held on January 20, 2010.

The agency sent the grievant a notice of noncompliance letter, dated January 21, 2010, because of her apparent nonattendance of the meeting. The grievant received that letter on January 22, 2010. The grievant states she responded to this notice of noncompliance, by sending a letter to the agency on January 29, 2010. After receiving the grievant's letter and a request for documents, the agency responded that the grievance had been closed due to the grievant's noncompliance. The grievant now requests a compliance ruling from this Department on these matters.

DISCUSSION

An agency may not close an allegedly noncompliant grievance without first seeking a ruling from the EDR Director. Before seeking such a ruling, the agency must inform the grievant, in writing, of the noncompliance and allow the grievant five workdays after receipt of

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<sup>1</sup> See EDR Ruling No. 2010-2471.

the written notice to correct the noncompliance. If EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the noncompliance. If it is not corrected within the designated timeframe, only then is the agency permitted to close the grievance.<sup>2</sup> In this case, the agency appears to have closed the grievance without first requesting a compliance ruling from this Department. Accordingly, the grievance was prematurely and improperly closed.

Even if the agency were to argue that the grievant was out of compliance for failing to meet with the second step-respondent and not responding to the January 21, 2010 noncompliance letter, which does appear to be entirely the case here, the agency never sought an EDR ruling for permission to close the grievance. If the agency requested such a ruling now, the request would be moot as the grievant has cured any noncompliance by attempting to reschedule the second step meeting.

As such, this grievance is hereby reopened. The agency and the grievant are ordered to work together to set a date for the second step meeting **within five workdays of receipt of this ruling.**<sup>3</sup> In addition, the grievant states that she has requested documents from the agency.<sup>4</sup> The agency must respond to the grievant's document request consistent with the requirements of the *Grievance Procedure Manual*.<sup>5</sup>

This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> *Grievance Procedure Manual* § 6.3; *Frequently Asked Grievance Questions*, FAQ # 29, at <http://www.edr.virginia.gov/faqs.htm>. Agencies may still close grievances without requesting such a ruling if initiation noncompliance is raised. *Grievance Procedure Manual* § 6.2; *Frequently Asked Grievance Questions*, FAQ # 29, at <http://www.edr.virginia.gov/faqs.htm>.

<sup>3</sup> The parties are not required to have the meeting within five workdays, but they must have a meeting scheduled within five workdays, subject to any requested periods of hold for the fulfillment of the grievant's document request. See *infra* note 5. Direct communication by phone or e-mail is suggested for scheduling the meeting, rather than waiting for the exchange of mailed correspondence.

<sup>4</sup> The agency had previously refused to respond to the grievant's request for documents because the grievance had been closed.

<sup>5</sup> *Grievance Procedure Manual* § 8.2. If the grievant wishes to obtain the documents before engaging in the second step meeting, she could request that the grievance process temporarily halt by submitting such a demand to human resources. See *Grievance Procedure Manual* § 8.2.

<sup>6</sup> See Va. Code § 2.2-1001(5), 2.2-3003(G).