

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 3, 2010; Ruling #2010-2559; Agency: Department of Juvenile Justice; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling No. 2010-2559
March 3, 2010

The Department of Juvenile Justice (the agency) seeks to administratively close the grievant's September 21, 2009 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

In his September 21, 2009 grievance, the grievant challenges management's apparent concerns over the appearance of his hair. The second step respondent replied to the grievance on or about January 6, 2010. According to the agency, the grievant never advanced his grievance. Because of the grievant's purported failure to advance his grievance, the agency apparently sent the grievant, on or about February 2, 2010, a notice of noncompliance via U.S. Return Receipt Mail that seems to have been received on February 3, 2010 by an individual acting as the grievant's agent.

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 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.² 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,

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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) 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.³

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he appears to have failed to comply with the grievance procedure. This Department therefore orders the grievant to correct this noncompliance **within ten work days of the date of this ruling**, if he has not already done so, by notifying the agency's human resources office in writing that he wishes to either conclude the grievance or advance his grievance to the third step.⁴ If he does not, the agency may administratively close the grievance without any further action on its part. The grievance 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.⁵

Claudia T. Farr
Director

³ 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.

⁴ See Grievance Procedure Manual § 3.2.

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