

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 29, 2010; Ruling #2010-2570; Agency: Norfolk State University; Outcome: No Ruling (issue moot).



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Norfolk State University
Ruling No. 2010-2570
March 29, 2010

Norfolk State University (NSU or the agency) seeks to administratively close the grievant's October 12, 2009 grievance. In its request for an administrative ruling, the agency alleged that the grievant had failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

In her October 12, 2009 expedited grievance, the grievant alleges that her employment was wrongfully terminated by her supervisor. The second step respondent replied to the grievance on or about December 11, 2009. Because of the grievant's purported failure to advance her grievance, the agency apparently sent the grievant, on or about February 19, 2010, a notice of noncompliance. Because the grievant had apparently not corrected the non-compliance, on March 8, 2010, the agency requested an administrative compliance ruling from this Department, which was received on March 10, 2010. The agency has subsequently reported that the grievant advanced her grievance on March 23, 2010.

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 had apparently failed to advance or conclude her grievance in a timely manner, it appears that she was out of compliance with the grievance process. Because she has now advanced her grievance, however, she has corrected the non-compliance. Thus, any issue of purported noncompliance is now rendered moot. Note, however, that this Department does not condone any party failing to comply with the time limits set forth in the grievance process and strongly cautions that repeated disregard for the five workday rule could result in a decision against the noncompliant party.⁴

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, e.g., EDR Ruling Nos 2003-049 and 2003-053, 2007-1470, 2007-1420, 2010-2536.

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