

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 10, 2010; Ruling #2010-2643; Agency: Department of Behavioral Health and Developmental Services; Outcome: No Ruling – Other.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Behavioral Health and Developmental Services
EDR Ruling No. 2010-2643
May 10, 2010

The grievant has requested a compliance ruling in his grievance with the Department of Behavioral Health and Developmental Services (“agency”). The grievant asserts that second step respondent has failed to timely provide a second step response.

FACTS

The grievant initiated a grievance on December 11, 2009. The grievance proceeded to the second step and a meeting was apparently held on April 27, 2010. Accordingly, the second step response was due on May 4, 2010. On May 6, 2010, the grievant informed the Division Director that he was out of compliance with the grievance process by not timely providing a response. That same day, he sought a compliance ruling from this Department.

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 any noncompliance, and resolve any compliance problems voluntarily, without this Department’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 For example, if a grievant believes that management has not adequately responded to the issues of his grievance (as the grievant believes in this case), the grievant must notify the agency head of the alleged noncompliance.

Before seeking a compliance ruling from this Department, a grievant must allow the agency five workdays after receipt of the written notice to correct any noncompliance. If after five workdays the grievant believes that the agency has failed to correct the

¹ *Grievance Procedure Manual*, § 6.

² *Grievance Procedure Manual*, § 6.3.

alleged noncompliance, he or she may request a ruling from this Department. Furthermore, should this Department find that the agency violated a substantial procedural requirement and that the grievance presents a qualifiable issue, this Department may resolve the grievance in the grievant's favor unless the agency can establish just cause for its noncompliance.

In this case, the grievant did not inform the agency head of the purported failure to timely respond. Rather, he informed the second step respondent (Division Director) of his failure to timely provide a response following their meeting. While there is certainly nothing improper about informing an individual of his or her noncompliance, the *Grievance Procedure Manual* requires a grievant to notify the agency head, in this case the Commissioner, of any noncompliance and allow the agency five workdays to correct any noncompliance prior to seeking a ruling from this Department.³

CONCLUSION

For the reasons set forth above, this ruling request is premature. Therefore, the grievant's request will not be addressed at this time. If the alleged noncompliance has not been corrected by the time the grievant receives this ruling, the grievant should inform the Commissioner of noncompliance and allow 5-workdays for the alleged noncompliance to be corrected before seeking another compliance ruling from this Department. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

³ *Id.*

⁴ *See* Va. Code § 2.2-1001(5); 2.2-3003(G).