

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: June 30, 2010; Ruling #2010-2682; Agency: Department of Social Services; Outcome: Agency In Compliance.



COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Social Services
Ruling No. 2010-2682
June 30, 2010

The grievant has requested a compliance ruling regarding the agency's determination of the appropriate step-respondents in her grievance, dated May 26, 2010, with the Department of Social Services (the agency).

In a grievance, the first step-respondent is usually the employee's immediate supervisor.¹ However, Section 2.4 of the *Grievance Procedure Manual* provides that the grievant may initiate a grievance with the "next level supervisor," if the grievance is alleging discrimination or retaliation by the immediate supervisor. Because the grievant asserts in her grievance that her immediate supervisor may have engaged in discrimination and/or retaliation, she maintains that the initial step-respondent is her immediate supervisor's supervisor, which appears to be correct. Under the agency's established list of step-respondents for the grievance procedure, an employee's supervisor's supervisor is also the second step-respondent.² In such cases, the normal first step is generally skipped and the grievance begins at the second step with the requisite second step meeting.³

In this case, the agency initially indicated that the grievant's supervisor's supervisor would serve as the first step-respondent. This assessment was incorrect, but the agency has recently corrected its error and notified the grievant that her supervisor's supervisor will properly serve as the second step-respondent, skipping the first step. The agency's subsequent action has rendered the grievant's claim of noncompliance moot because the error has been cured.⁴ As

¹ *Grievance Procedure Manual* § 2.4.

² See Agency Step Respondents, at http://www.edr.virginia.gov/agencysteps_rz.htm.

³ See Grievance FAQs, No. 12, at <http://www.edr.virginia.gov/faqs.htm>. Alternatively, the parties could agree to a modification of the step-respondents with substitutions, for example.

⁴ Even though the agency's response to the grievant's notice of noncompliance was not issued until two weeks after the notice of noncompliance, there is no basis to order any finding of noncompliance against the agency here. Indeed, when finding noncompliance, the EDR Director will typically order noncompliance corrected before rendering a decision against a noncompliant party. Because the noncompliance has been corrected, there is nothing to order the agency to do.

such, the grievance is now cleared to proceed to the second step with the grievant's supervisor's supervisor.⁵

This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁵ A request for a compliance ruling generally stops the grievance process temporarily. *See Grievance Procedure Manual* § 6.1. Because this compliance ruling is concluded, the grievance process is no longer stayed.

⁶ *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).