

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 27, 2010; Ruling #2011-2731; Agency: Norfolk State University; Outcome: Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Norfolk State University
Ruling No. 2011-2731
August 27, 2010

Norfolk State University (NSU or the agency) seeks to administratively close the grievant's April 28, 2010 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 her grievance.

FACTS

On April 28, 2010, the grievant initiated a grievance challenging a Group II Written Notice disciplinary action. According to the agency, the agency head qualified the grievance for a hearing on or about June 24, 2010. Because the grievant did not return her grievance, checking the box marked "I advance my grievance to hearing and am returning it to the Human Resources Office," within 5 workdays of receiving the agency head's qualification decision, the agency sent the grievant a notice of noncompliance on July 19, 2010. The July 19th notice of noncompliance was apparently delivered on August 11, 2010. Because more than five workdays have elapsed since the agency's notification of noncompliance, and the grievant has not yet cured the purported non-compliance, the agency seeks a compliance ruling.

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

¹ *Grievance Procedure Manual* § 6.3.

² *See Id.*

order the party to correct the noncompliance or, in cases of substantial noncompliance, 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

In this case, the grievant appears to have failed to return the grievance after it was qualified for hearing. Moreover, the agency appears to have notified the grievant of her failure, but the grievant has not advanced or concluded her grievance. Accordingly, this Department therefore orders the grievant to inform the agency **in writing within ten work days of the date of this ruling** whether she desires to advance her grievance to hearing. If she so informs the agency, her grievance may proceed. If she does not, the agency may administratively close the grievance without any further action on its part.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 If the agency administratively closes the grievance, 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).

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