

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 21, 2011; Ruling No. 2011-2924; Agency: Department of Behavioral Health and Developmental Services; Outcome: Grievant Not In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Department of Behavioral Health and Developmental Services  
Ruling No. 2011-2924  
March 21, 2011

The Department of Behavioral Health and Developmental Services (the “agency”) seeks a compliance ruling regarding the grievant’s October 28, 2010 expedited grievance. Specifically, the agency seeks permission to administratively close the grievance due to the grievant’s alleged noncompliance.

FACTS

The grievant initiated an expedited grievance on October 28, 2010. The second step respondent sent a response to the grievant on or about November 8, 2010. The grievant apparently did not acknowledge receipt of the second step response. As such, on or about January 4, 2011, the agency sent the grievant a letter describing the grievant’s alleged noncompliance, notifying the grievant he had five workdays to respond, and informing the grievant the agency would seek administrative closure if the grievant did not come back into compliance. The grievant apparently has not responded. The agency now requests a compliance ruling from this Department seeking permission to administratively close the October 28<sup>th</sup> grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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.<sup>2</sup> 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, render a decision against the noncomplying party on any qualifiable issue. When an

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *Id.*

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.<sup>3</sup>

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of presumably receiving the second resolution step response. Moreover, the agency appears to have attempted to notify the grievant of his noncompliance, but the grievant has not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure.<sup>4</sup> This Department therefore orders the grievant to correct his noncompliance **within ten work days of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude his grievance or advance the grievance to the agency head for a qualification determination. 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.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> 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.

<sup>4</sup> See *Grievance Procedure Manual* § 2.4.

<sup>5</sup> See Va. Code §§ 2.2-1001(5); 2.2-3003(G).