

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: April 18, 2011; Ruling No. 2011-2948; Agency: Department of Behavioral Health and Developmental Services; Outcome: No Ruling – Premature.



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. 2011-2948
April 18, 2011

The grievant has asked for a compliance ruling from this Department. She alleges that the response provided by the second step-respondent does not comply with the provisions of the *Grievance Procedure Manual*.

FACTS

The second step response, dated March 29, 2011, states: “The relief you are requesting will not be granted at this time.” The grievant asserts that this response does not comply with the requirements of the grievance procedure because it does not provide a basis for not granting the relief requested. The grievant submitted a ruling request, dated March 30, 2011, to this Department to address the alleged noncompliance. There is no indication that the grievant submitted a notice of noncompliance to the agency head and allowed five workdays for the agency to address or correct the alleged noncompliance.

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 involvement. Specifically, the party claiming noncompliance must first notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.² If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.³

¹ *Grievance Procedure Manual* § 6.

² *Grievance Procedure Manual* § 6.3.

³ *Id.*

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that she first notified the agency head in writing of the alleged violation and given the agency five workdays to correct the purported noncompliance, as required by the grievance procedure.⁴ If the grievant wishes to pursue this matter, she should provide a notice of noncompliance to the agency head and allow the agency five workdays to correct the alleged problems.⁵ If the grievant remains dissatisfied with the agency's response after she has informed the agency head of the purported noncompliance and allowed five workdays for correction, she may seek a ruling request from this Department.

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

Claudia T. Farr
Director

⁴ *Id.*

⁵ *See id.*

⁶ Va. Code §§ 2.2-1001(5); 2.2-3003(G).