

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling
Date: June 28, 2011; Ruling No. 2011-3001; Agency: Virginia Commonwealth
University; Outcome: Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling No. 2011-3001
June 28, 2011

The grievant seeks a compliance ruling regarding his six grievances initiated with Virginia Commonwealth University (the University) between April 28-30, 2011. The grievant alleges that the agency improperly proceeded with the grievance process after he had asked that it be stayed so that, among other things, a dispute over requested documents could be resolved.

FACTS

The grievant initiated six grievances between April 28-30, 2011. The grievant made an extensive request for documents on May 4, 2011. He made an additional request on May 6, 2011, just prior to when the parties had agreed to meet for the second step meeting. Between May 4-6, 2011, it appears that the grievant and second step respondent attempted to schedule and hold the second step meeting. The University contends that the second step respondent offered to meet on May 4th and offered again to meet on the 5th, an offer the grievant first accepted but then rejected by cancelling the appointment. According to the University, the parties then agreed to meet the following day, but after confirming the appointment, the grievant again cancelled. The second step respondent sent a written response to the grievant on May 10, 2011.

The grievant does not really appear to contest the agency's version of the facts but asserts he had explained to University management that issues, including but not limited to concerns over documents, still needed to be resolved prior to the meeting. The grievant has provided information to this office that appears to reflect that he informed the University that he wanted to stay the process until the outstanding document issues could be resolved.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first

¹ *Grievance Procedure Manual* § 6.3.

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 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

The *Grievance Procedure Manual* provides that “[w]ithin 5 workdays of the second-step respondent’s receipt of the grievance, the second-step meeting must be held.” The grievance procedure also provides that absent just cause, all documents relating to the actions grieved shall be made available, upon request⁴ and that the requesting party has a right to demand that the process halt until the documents are provided.⁵ The University appears to assert that the grievant has violated the former grievance provision concerning the second step meeting by repeatedly cancelling or failing to show for that meeting; grievant asserts that the University violated the latter provision by providing a second step response prior to any meeting having occurred and despite his request to stay the process.

In this case, the grievant exercised his option to request that the process be stayed until he received requested documents, thus the University has prematurely provided a second step response. Moreover, Frequently Asked Grievance Question No. 13 on EDR’s website provides that “any party to a grievance has a right to insist on the second-step meeting, and if either party demands it, then the second-step meeting generally must

² *Id.*

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 Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2. “Just cause” is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9. Examples of “just cause” include, but are not limited to, (1) the documents do not exist, (2) the production of these documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.

⁵ *Grievance Procedure Manual*, § 8.2.

take place.”⁶ Here, it appears that the grievant seeks a second step meeting, therefore, he is entitled to one.

To the extent that the agency believes the grievant’s actions were potentially in violation of the grievance process, it should use the noncompliance process described above and give the grievant notice of noncompliance and five workdays to correct it.

CONCLUSION

Based on the foregoing, if it has not already done so, the agency has **five workdays upon receipt of this ruling** to either provide all requested, relevant documents or to explain in writing why such production is not possible within that timeframe, and then produce such documents no later than ten workdays from receipt of this ruling. If requested documents are withheld due to a claim of irrelevance and/or “just cause,” the agency must provide the grievant with a written explanation of each claim no later than ten workdays from receipt of this ruling.⁷ Furthermore, the parties are ordered to take all due measures to work together and come to an agreement addressing the reasonable scope of the grievant’s document request, if disputed. If either party believes that the other has not followed the grievance process, it must give the other notice of noncompliance and five workdays to correct prior to seeking a ruling from the EDR Director. Once the document issue is resolved, the parties shall reschedule the second step meeting.

This Department’s rulings on matters of compliance are final and nonappealable.⁸

Claudia T. Farr
Director

⁶ *Frequently Asked Grievance Questions*, No. 13, <http://www.edr.virginia.gov/faqs.htm>. See also EDR Ruling No. 2011-2803; EDR Ruling No. 2010-2576; and EDR Ruling No. 2008-1991.

⁷ The agency asserts that it responded to the grievant’s document request on May 12, 2011.

⁸ See Va. Code §§ 2.2-1001(5); 2.2-3003(G).