

Issue: Compliance – Grievance Procedure (5-day Rule and Documents); Ruling Date: September 12, 2011; Ruling No. 2012-3055; Agency: Department of Juvenile Justice; Outcome: Agency Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Number 2012-3055
September 12, 2011

The grievant has requested a ruling regarding two alleged instances of noncompliance with the grievance procedure by the Department of Juvenile Justice (the "agency"). For the reasons discussed below, this Department cannot find noncompliance on the part of the agency.

FACTS

On June 21, 2011, prior to filing his grievance, the grievant requested the agency facility's superintendent to provide him with a videotape of an incident that occurred on June 7, 2011. On July 5, 2011, the grievant filed a grievance, alleging that the agency engaged in disrespectful acts, and again referencing his request for the videotape.

The July 5th grievance advanced through the first resolution step, and on July 26, 2011 a second resolution step meeting was held. On August 2, 2011, the grievant sent a letter of noncompliance to the agency head, indicating that he had not received the agency's second step response. The agency issued a response on August 2, 2011, indicating that second step respondent had five workdays from the date of the second resolution step meeting to issue a response and that the second step respondent had been on approved leave during those five workdays. On August 4, 2011, the agency issued its second resolution step response to the grievant. However, the grievant alleges that the July 5th Grievance Form A had not been forwarded to him when he received the agency's second resolution step response. The grievant received the July 5th Grievance Form A on August 16, 2011.

Meanwhile, the agency mailed the grievant the June 7, 2011 videotape on August 12, 2011. The grievant admits he received two copies of the videotape on August 20, 2011 and August 24, 2011 respectively, but alleges that he is unable to view the provided videotapes as they each display an error message. Because the grievant's copies were not viewable, the grievant alleges that he contacted the agency facility three times to request a viewable copy. To date, he contends that he has not received a viewable copy. The grievant now seeks a compliance ruling on this matter, stating the agency should provide him with a viewable copy of the June 7th videotape.

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 Where a grievant asserts that the agency is noncompliant, the grievant must notify the agency head of the noncompliance.³ 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 its delay in conforming to EDR's order.⁴

In this case, the grievant's request for a compliance ruling with regards to the June 7th videotape is premature because the grievant has not shown that he first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure. The grievant is therefore advised that if he still desires a compliance ruling from this Department, he must first give written notice of the alleged noncompliance to the agency head and allow the agency five days to correct any noncompliance. Only after the grievant has satisfied this procedural prerequisite will this Department address any claim of noncompliance.

Once the grievant provides the agency head with written notice of the alleged noncompliance, the agency will have five calendar days from receipt of that notice to respond to the grievant's videotape request, by either producing the requested videotape in a format that can be viewed by the grievant using his own equipment, or in the alternative, providing reasonable accommodations to the grievant to view the videotape at an agency location using agency equipment. If the videotape is withheld due to a claim of irrelevance and/or "just cause," the agency must provide the grievant with a written explanation of each claim within 10 workdays from its receipt of the noncompliance notice.⁵

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

³ *Id.*

⁴ 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.

⁵ *Grievance Procedure Manual* § 8.2.

As to the grievant's request for a compliance ruling with regard to the agency's alleged noncompliance in not producing the second resolution step response and Grievance Form A, that issue is now moot as the grievant admits he has received these documents.

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

Claudia T. Farr
Director

⁶ Va. Code § 2.2-3003(G).