

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: October 20, 2011; Ruling No. 2012-3133; 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  
EDR Ruling No. 2012-3133  
October 20, 2011

The Department of Behavioral Health and Developmental Services (“agency”) has requested a compliance ruling related to the grievant’s May 11, 2011 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 May 11, 2011, the grievant initiated a grievance with the agency. On or about June 8, 2011, the agency mailed the third resolution step response to the grievant. On June 29, 2011, the agency mailed a certified letter of noncompliance to the grievant, indicating the agency had not received a response from the grievant. A document provided by the agency indicates that the noncompliance letter was received on July 11, 2011. Since more than five workdays have elapsed since the agency’s notification to the grievant of her alleged noncompliance, and the grievant has not yet advanced or concluded her grievance, the agency seeks a compliance ruling allowing it to administratively close the 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 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

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

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

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 her grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.<sup>4</sup> Moreover, the agency has attempted to notify the grievant of her noncompliance, but the grievant has not advanced or concluded her grievance.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure. This Department therefore orders the grievant to correct her noncompliance **within ten work days of the date of this ruling** by notifying her human resources office in writing that she wishes either to conclude or advance the grievance to the agency head for a qualification determination. If she 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* § 3.3.

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