

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: December 21, 2011; Ruling No. 2012-3186; Agency: Department of Corrections; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2012-3185
December 21, 2011

The grievant has sought a compliance ruling concerning her October 20, 2011 grievance with the Department of Corrections (the agency) due to the agency's alleged noncompliance in handling this grievance.

Although 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,¹ 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.

Based upon a review of the materials submitted by the grievant, there are essentially two categories of alleged noncompliance by the agency in this case. The first, the agency's incorrect determination that the grievant did not have access to the grievance procedure, was addressed in EDR Ruling No. 2012-3165, which the agency has apparently followed. The second issue involves the grievant's request for documents. The grievant states that the agency was both tardy in providing a response to her request and has not produced all the materials she sought. However, it is also notable that the grievant only submitted a Notice of Noncompliance to the agency head regarding her position that the agency has failed to produce certain documents on November 28, 2011, just two days prior to requesting this ruling.

The facts of this case do not support a finding that the agency's conduct substantially violated the grievance procedure, much less that the agency was motivated by bad faith or a gross disregard of the grievance procedure. In short, the agency made an incorrect determination of access, which it has remedied following an EDR ruling, and there is a potential dispute over documents, which is not yet ripe for determination.² Consequently, there is no basis to award relief on the merits of the grievance. While there may be an outstanding issue of whether the

¹ See Va. Code § 2.2-3003(G).

² See *Grievance Procedure Manual* § 6.3.

agency has properly responded to the grievant's document request, it is not a subject for this ruling as it would be premature to address the matter.

This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

³ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).