

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: March 30, 2012; Ruling No. 2012-3299; Agency: Department of Juvenile Justice; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling No. 2012-3299
March 30, 2012

The grievant has requested that this Department rule regarding the grievant's December 13, 2011 grievance with the Department of Juvenile Justice (the agency). The grievant alleges that the agency has failed to comply with the time limits set forth in the grievance procedure.

FACTS

The grievant initiated a grievance on or about December 13, 2011. The grievance advanced through the management resolution steps and, according to evidence provided by the agency, the agency sent the grievant the agency head's qualification decision on or about February 18, 2012. According to evidence provided by the agency (United States Postal Service (USPS) tracking records), the USPS attempted to deliver the agency head's qualification agency but was forced to leave pick-up notices, apparently unheeded, which ultimately left the letter unclaimed.

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 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

¹ *Grievance Procedure Manual* § 6.3.

² *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.³

In this case, the grievant asserts that the agency is out of compliance for not processing his grievance in a timely manner. However, documentation provided to this Department appears to indicate that the agency attempted to provide the grievant with a response to his grievance but the grievant failed to pick up the letter. Accordingly, this Department cannot conclude that the agency is out of compliance with the grievance process. In order to expedite the advancement of this grievance, the agency is instructed to fax or attach to an e-mail a copy of the February 18, 2012 qualification decision to the grievant's attorney and mail, via regular first class mail, a copy to the grievant.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

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