

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 18, 2012;
Ruling No.2012-3338; Agency: Department of Correctional Education; Outcome:
Agency Not in Compliance/Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Correctional Education
EDR Ruling Number 2012-3338
May 18, 2012

The grievant seeks a compliance ruling in her February 24, 2012 grievance initiated with the Department of Correctional Education (the "agency"). She alleges that the agency failed to comply with the time limits set forth in the grievance procedure for issuing its first step response, failed to provide requested documents, and improperly closed her February 24, 2012 grievance administratively. For the reasons set forth below, this Department concludes that the agency improperly closed the February 24, 2012 grievance.

FACTS

The grievant was employed by the agency as a Program Support Technician. On January 25, 2012, the grievant was terminated. On February 24, 2012, the grievant initiated a grievance challenging her termination. The grievant alleges the agency has failed to respond to the first resolution step to date. Moreover, the grievant asserts that she is not required to attend a first resolution step with the agency under the grievance procedure rules.

On March 22, 2012, the grievant requested copies of all documents used to terminate her employment. In addition, the grievant inquired about the status of her grievance and informed the agency that she had expected a first resolution step response by March 13, 2012. The grievant alleges the agency has failed to respond to the grievant's document request and status inquiry to date.

The agency asserts that it did not send a written first resolution step response to the grievant because it decided that it was important to first meet with the grievant in order to gather more facts. The agency alleges that it telephoned the grievant in an attempt to set up a first resolution step meeting, and when its calls were not returned, the grievant's supervisor attempted to contact the grievant via certified mail about the proposed first resolution step meeting. When no response was received, the agency sent the grievant a certified letter on April 9, 2012, advising her to make contact with the agency by the close of business on April 16, 2012, or in the alternative, the agency would administratively close the February 24, 2012 grievance. On April 18, 2012, the agency administratively closed the February 24, 2012 grievance when no response was received by the grievant within the allotted time. The grievant now seeks a compliance ruling from this Department.

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 involvement. Specifically, if an agency fails to correct an alleged noncompliance, then the grievant must first notify the agency head in writing of the alleged noncompliance and give the agency 5 workdays to correct any noncompliance.² If the grievant still feels that the agency is noncompliant, then she may request a ruling from this Department.

In this case, the agency's administrative closure of the grievant's February 24, 2012 grievance appears to be premature because the agency has not shown that it first notified the grievant in writing of the alleged procedural violations, as required by the grievance procedure. Furthermore, even if the grievant had received written notice of noncompliance from the agency, the agency must request a compliance ruling from this Department before it can administratively close a grievance.³ As such, this Department concludes that the agency improperly closed the grievant's February 24, 2012 grievance, and thus, the Department hereby orders the agency to reopen the grievance.

We are further compelled to note that under Section 3.1 of the *Grievance Procedure Manual*, a first resolution step meeting *may* be held to discuss issues in dispute, but such a meeting is not required.⁴ Because such a meeting is not required, the grievant is not in violation of any grievance procedure rule and the agency must provide the first step response **within 5 workdays of receipt of this ruling.**

Finally, the grievant is advised that if she desires a compliance ruling from this Department, she 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 future claim of noncompliance.⁵

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

Claudia T. Farr
Director

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

³ *Id.*

⁴ *Grievance Procedure Manual* § 3.1

⁵ In the future, if the grievant or the agency has questions about the grievance process, they might consider calling EDR's toll-free, confidential AdviceLine for assistance. EDR's AdviceLine is available to state employees and agency management Monday through Friday from 8:30 a.m. to 4:30 p.m., and can be reached at 1-888-23ADVICE (1-888-232-3842).

⁶ Va. Code §§ 2.2-1001(5), 2.2-3003(G).