

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: July 27, 2012;  
Ruling No. 2013-3391; Agency: Department of Juvenile Justice; Outcome: Grievant  
Not in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**COMPLIANCE RULING**

In the matter of the Department of Juvenile Justice  
EDR Ruling Number 2013-3391  
July 27, 2012

The Virginia Department of Juvenile Justice (“agency”) has requested a compliance ruling related to the grievant’s June 11, 2012 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure by not timely scheduling the second resolution step meeting.

**FACTS**

On June 11, 2012, the grievant initiated an expedited grievance with the agency. On June 14, 2012, the agency left a voicemail message with the grievant, attempting to schedule the second resolution step meeting. After the agency did not receive a response from the grievant, the agency mailed a certified letter of noncompliance to the grievant on July 5, 2012, indicating the agency had not received a response from the grievant. Additionally, the agency requested a response from the grievant within five workdays upon receipt of the noncompliance letter, and indicated the agency would close the June 11, 2012 grievance if no response was received. The postal records indicated the grievant signed for the certified letter of noncompliance on July 13, 2012.

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 scheduled the second resolution step meeting, 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 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 EDR, who may in turn order the party to

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

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

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 the delay in conforming to EDR's order.<sup>3</sup>

The *Grievance Procedure Manual* provides that “[w]ithin 5 workdays of the second-step respondent’s receipt of the grievance, the second-step meeting must be held.”<sup>4</sup> The agency alleges that the grievant has violated this portion of the grievance procedure by failing to contact the agency in regards to scheduling her second resolution step meeting. Although there is no specific provision in the grievance procedure expressly requiring parties to cooperate with the scheduling of the second resolution step meeting, certainly such cooperation is expected. Non-responsiveness by parties to a grievance does not support the purpose of the grievance process to resolve workplace disputes fairly and promptly.<sup>5</sup>

As the grievant has apparently failed to timely contact the agency to schedule her second resolution step meeting, she has failed to comply with the grievance procedure. EDR therefore orders the grievant to contact the agency’s designated second step-respondent **within five work days of the date of this ruling** to either provide her availability for the second resolution step meeting or notify the agency’s human resources office that she wishes to conclude her grievance. If the grievant continues to be non-responsive to the agency’s requests to schedule the second resolution step meeting, the agency could simply select a meeting date and notify the grievant. If the grievant does not appear for the meeting, the agency could simply respond to the grievance in writing without the input of the grievant during a face-to-face meeting.<sup>6</sup> In the alternative, the agency could request another compliance ruling at that time seeking administrative closure of the grievance.

EDR’s rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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<sup>3</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR 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, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>4</sup> *Grievance Procedure Manual* § 3.2.

<sup>5</sup> *See Grievance Procedure Manual* § 1.1.

<sup>6</sup> If the agency provides a response without first meeting with the grievant, however, the agency will waive the right to allege noncompliance by the grievant in not coming to the meeting. Number 13 of the Frequently Asked Grievance Questions on EDR’s website provides that “any party to a grievance has a right to insist on the second-step meeting, and if either party demands it, then the second-step meeting generally must take place.” Frequently Asked Grievance Questions, No. 13, <http://www.dhrm.virginia.gov/EDR/faqs.htm>.

<sup>7</sup> *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).