

Issues: Grievance Procedure (Resolution Steps and Other); Ruling Date: August 8, 2012; Ruling No. 2013-3400; Agency: Department of Juvenile Justice; Outcome: Grievant Not in Compliance, Agency 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
Ruling Number 2013-3400
August 8, 2012

The grievant has requested a ruling on whether her July 27, 2012 grievance with the Department of Juvenile Justice (the agency) is in compliance with the grievance procedure. Although the grievant did not use the correct form or submit her grievance to the appropriate step-respondent, for the reasons discussed below, the agency did not have authority to close the grievance unilaterally.

FACTS

The grievant initiated her grievance, dated July 27, 2012, by e-mailing it directly to the agency head on a Grievance Form A – Expedited Process. The grievant alleges “habitually abusive, hostile, unethical, and retaliatory” actions by members of the administration in her Division. As such, the grievant sought to bypass all members of agency management she feels are intimidating, retaliating, and/or discriminating against her and proceed directly to the agency head. The agency closed the grievance due to noncompliance for using the incorrect form and submitting the grievance to the agency head rather than another member of management. The grievant now appeals that determination.

DISCUSSION

Unless a grievant’s act of noncompliance falls under Sections 2.2 through 2.4 of the *Grievance Procedure Manual*, an agency may not close an allegedly noncompliant grievance without first seeking a ruling from EDR. Before seeking such a ruling, the agency must inform the grievant, in writing, of the noncompliance and allow the grievant five workdays after receipt of the written notice to correct the noncompliance. If EDR finds that the grievant is out of compliance, EDR will order the grievant to correct the noncompliance. If it is not corrected within the designated timeframe, the agency may close the grievance.¹

In this case, the alleged acts of noncompliance are 1) using an incorrect grievance form, and 2) submitting the grievance to the wrong step-respondent. None of these incidents of alleged

¹ *Grievance Procedure Manual* § 6.3; *Frequently Asked Grievance Questions*, FAQ # 29, at <http://www.edr.virginia.gov/faqs.htm>.

noncompliance fall under Sections 2.2 through 2.4. Thus, the agency would not have grounds to unilaterally close the grievance without first requesting a compliance ruling from EDR. Accordingly, because no such ruling was requested, the grievance was prematurely closed. However, we will address these allegations of noncompliance further.

EDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.² Rather, the remedy in such a situation is either for management to provide the grievance paperwork to the appropriate step-respondent or return the grievance to the grievant for submission to that step-respondent. In either case, for purposes of timeliness, the initiation date of the grievance will be considered the date it was submitted initially. EDR views using the wrong grievance form or attempting to use the expedited process where there is not an automatic right to do so as noncompliance of a similar nature and should be remedied in the same manner.³

Nothing in the grievant's paperwork indicates that she has been suspended, demoted, or lost pay such that an expedited grievance is appropriate.⁴ As such, the grievant must resubmit her grievance on a non-expedited Grievance Form A. Further, in this case, the appropriate first step-respondent in a non-expedited grievance would not be the agency head. If the grievant is alleging that the normal first step-respondent, her immediate supervisor, is retaliating or discriminating against her, she may submit her grievance to her immediate supervisor's supervisor.⁵ However, the grievance procedure does not permit the grievant to skip further levels of management in this case without agreement by the agency.⁶ Therefore, the grievant is directed to resubmit her grievance on a Grievance Form A to either her immediate supervisor or that individual's supervisor **within five workdays of receipt of this ruling.**⁷

EDR's rulings on matters of compliance are final and nonappealable.⁸



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² E.g., EDR Ruling No. 2006-1114; EDR Ruling No. 2001-195; EDR Ruling No. 99-007.

³ If a grievant were to refuse or dispute who the appropriate step-respondent should be, either party could request a compliance ruling from EDR following written notice of noncompliance to the opposing side. *Grievance Procedure Manual* § 6.3.

⁴ See *Grievance Procedure Manual* § 3.4. However, EDR will also take this opportunity to remind the parties that even where there is not a right to use the expedited process, the parties may agree to use that process anyway. *Grievance Procedure Manual* §§ 3.4, 8.4.

⁵ *Grievance Procedure Manual* § 2.4.

⁶ There are other provisions permitting waiver of the required second step meeting, but those are not at issue in this ruling. See *Grievance Procedure Manual* § 3.2.

⁷ As discussed above, for purposes of timeliness, the initiation date of this grievance will be considered July 27, 2012.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).