

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 6, 2012; Ruling No. 2013-3463; 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
Ruling Number 2013-3463
November 6, 2012

The Department of Juvenile Justice (the agency) seeks to administratively close the grievant's June 27, 2012 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

The third step-respondent provided a written response to the grievant's June 27, 2012 grievance on or about August 9, 2012. Because, according to the agency, the grievant has failed to return the grievance package to the agency to advance or conclude the grievance within five workdays of receiving the third step response, the agency sent the grievant a notice of noncompliance on September 18, 2012. As more than five workdays have elapsed since the grievant's presumed receipt of the notice of noncompliance letter, and the grievant has not advanced or concluded the grievance, the agency seeks a compliance ruling.

In response to the agency's request for a ruling, the grievant states that she had returned the grievance paperwork to the agency to escalate to the next level. However, the grievant's response also refers to a July 27th grievance, rather than one dated June 27th. Because the discrepancy in the month may have been a simple mistake, EDR sought clarification and supporting documentation from the grievant during its investigation for this ruling. The response received from the grievant did not clarify the situation and indicated that her attorney would follow-up with the agency's attorney. EDR has received no further information from either the agency or the grievant in relation to this ruling since that response.

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 the involvement of the Office of Employment Dispute Resolution (EDR). Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the

¹ *Grievance Procedure Manual* § 6.3.

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 EDR, 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 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

Although the grievant states she has escalated the June 27, 2012 grievance, the documentation available to EDR at this time does not support that conclusion.⁴ Therefore, we must find that the grievant appears to have failed to advance or conclude her grievance within five workdays of receiving the third resolution step response. Moreover, the agency appears to have notified the grievant of the noncompliance, but the grievant has not yet cured the issue.

As the grievant has apparently failed to advance or conclude her grievance in a timely manner, she has failed to comply with the grievance procedure.⁵ EDR therefore orders the grievant to correct this noncompliance **within ten workdays of the date of this ruling** by notifying her agency human resources office in writing that she wishes to either conclude the grievance or seek qualification of her grievance for hearing from the agency head. The grievant must indicate her choice on the Grievance Form A (or a copy if the original is with another party or otherwise not accessible). If the grievant does not do so, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

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



Christopher Grab
Director
Office of Employment Dispute Resolution

² *Id.*

³ 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.

⁴ Even if the grievant did indeed escalate her grievance in a timely manner, the grievant is being provided an additional opportunity by this ruling. As such, there is no prejudice to this finding as long as the grievant follows the instructions provided below.

⁵ See *Grievance Procedure Manual* § 3.3.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).