

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 27, 2012; Ruling No. 2013-3473, 2013-3474; 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 Numbers 2013-3473, 2013-3474
November 27, 2012

The Department of Juvenile Justice (the agency) seeks to administratively close the grievant's August 9, 2012 and August 13, 2012 grievances. 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 grievances.

FACTS

The second step-respondent provided written responses to the grievant's August 9, 2012 and August 13, 2012 grievances on or about September 18, 2012.¹ 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 second step responses, the agency sent the grievant a notice of noncompliance on October 22, 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.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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 opposing party to correct any noncompliance.³ 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

¹ Although the date of the second step responses was September 10, 2012, the Notification of Noncompliance sent to the grievant indicates that the documents were sent to the grievant's attorney by e-mail on September 18, 2012. The agency has also provided clarification that it is indeed the second step responses that were last provided in these grievances, not the third step responses, as indicated in the notice of noncompliance.

² *Grievance Procedure Manual* § 6.3.

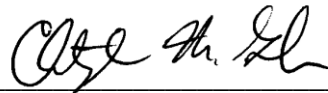
³ *Id.*

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.⁴

In this case, the grievant appears to have failed to advance or conclude her grievances within five workdays of receiving the agency's second resolution step responses, as required by the grievance procedure.⁵ Moreover, the agency has apparently notified the grievant of her noncompliance, but the grievant has not advanced or concluded her grievances.

As the grievant has apparently failed to advance or conclude her grievances in a timely manner, she has failed to comply with the grievance procedure.⁶ 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 grievances or proceed to the third resolution step. 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 grievances without any further action on its part. The grievances 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.⁷



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⁴ 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.

⁵ See *Grievance Procedure Manual* § 3.2.

⁶ See *id.*

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).