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COMPLIANCE RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2024-5652
January 3, 2024

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s November 30, 2023 grievance with the Department of Behavioral Health and Developmental Services (“the agency”).

FACTS

On or about November 30, 2023, the grievant initiated a grievance with the agency, submitting the grievance by email to his supervisor. Having apparently received no further response from the supervisor, the grievant sent a notice of noncompliance by email on December 11, 2023. As the supervisor did not respond again, the grievant sought this ruling on December 19, 2023. Upon receipt of EDR’s notice that this ruling had been opened, the agency indicated that the human resources at the grievant’s facility was not aware of the grievance, but that the grievance would be directed to the first-step respondent to be addressed.

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 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.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 EDR finds that either party to a grievance is in noncompliance, its 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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

In this case, the grievant's supervisor and presumed first-step respondent appears to have failed to respond to the grievance within five workdays of receipt, as required by the grievance procedure.⁴ EDR therefore orders the agency to correct the noncompliance **within five workdays of the date of this ruling** by the first-step respondent responding to the grievance in writing per the requirements of the grievance procedure (if this has not already occurred).

EDR's rulings on matters of compliance are final and nonappealable.⁵

Christopher M. Grab
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³ Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, 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 See *Grievance Procedure Manual* § 3.1.

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