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COMPLIANCE RULING

In the matter of the Virginia Community College System
Ruling Number 2024-5674
February 27, 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 December 1, 2023 grievance with a community college in the Virginia Community College System (“the college” or “the agency”). As described below, EDR finds that the agency has corrected its noncompliance.

FACTS

On or about December 1, 2023, the grievant initiated a grievance with the agency regarding retaliation. The grievance advanced to a combined second and third step with the President of the college. The grievant and the President met on February 2, 2024. Having apparently received no further response, the grievant notified the President of noncompliance in a February 12, 2024 email. As of the date of the grievant’s subsequent request to EDR for a compliance ruling, the grievant had not received the combined second and third step response. After requesting this ruling, the President appears to have issued his response to the grievance on February 22, 2024.

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

A step respondent's response to a grievance following a required meeting must generally be provided within five workdays.⁴ As the grievant had not received a written response from the President within this time period following the meeting, the grievant was correct to request this ruling. Nonetheless, it is clear that the grievant has now received the President's response in writing, as required by the grievance procedure. We therefore find that the grievant's claim of noncompliance is moot because it has been corrected by the agency and we will take no further action on this issue.

CONCLUSION

For the reasons set forth above, EDR finds that the agency has corrected its noncompliance and there are no other outstanding matters to be addressed at this time. The parties should therefore proceed as required by the grievance procedure. The grievance process was temporarily halted for EDR to address the grievant's claim of noncompliance.⁵ Because the grievant has received the President's response, she should respond within five workdays, indicating whether she wishes to conclude her grievance or request that the President qualify the grievance for a hearing.

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

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* §§ 3.2, 3.4.

⁵ *Id.* § 6.1 (stating that a challenge of alleged noncompliance to EDR "will normally stop the grievance process temporarily").

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