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COMPLIANCE RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2025-5872
May 2, 2025

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to alleged noncompliance with the grievance procedure by the University of Virginia Medical Center (the “agency”) in failing to produce requested documentation.

FACTS

On or about March 28, 2025, the grievant submitted an expedited grievance that primarily challenges her receipt of a Step 3 Performance Warning.¹ Pursuant to her grievance, the grievant requested certain records from the agency, including “all notes and documents relating to the events” described in the Step 3, her supervisor’s notes about the Step 3, and human resources’ notes from the predetermination meeting. The grievant appears to have first requested the records on April 2, with follow up on April 9 after no records were received. On April 16, having received no documentation from the agency, the grievant requested a compliance ruling from EDR.

DISCUSSION

The grievance statutes provide that “[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party.”² EDR’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. Just cause is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”³ For purposes of document production, examples of just cause include, but are not limited to, (1) the documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.⁴ In determining whether just cause exists for nondisclosure of a relevant document under the grievance procedure, and in the absence of a well-established and

¹ The Step 3 has since been reduced to a Step 2 during the single resolution step.

² Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

³ *Grievance Procedure Manual* § 9.

⁴ See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

applicable legal privilege,⁵ EDR will weigh the interests expressed by the party for nondisclosure of a relevant document against the requesting party's particular interests in obtaining the document.⁶ The grievance statutes further provide that “[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance.”⁷

EDR has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner. All such documents must be provided within five workdays of receipt of the request. If it is not possible to provide the requested documents within the five-workday period, the party must, within five workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than ten workdays from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or “just cause,” the withholding party must provide the requesting party with a written explanation of each claim, no later than ten workdays from receipt of the document request.⁸

While this ruling was pending, on April 25, 2025, the agency produced documentation to the grievant in response to her requests for information. EDR followed up with the grievant to determine if there were any documents that she had requested but not yet received. The grievant identified that she was still seeking her supervisor's notes about the underlying personnel action that she grieved. It appears that the agency produced information that the supervisor received from a witness about an incident at issue in the personnel action, but no other notes were provided. The agency has since stated to EDR that the supervisor has no other such notes.

In consideration of the above, EDR finds that the agency has substantially complied with the grievance procedure in responding to the grievant's request for documents. EDR has not been made aware that there are any further documents at issue (the supervisor's notes) that exist and have not been provided. To proceed with the grievance, the grievant must now either advance the March 28, 2025 grievance to the next step or notify the agency's human resources office in writing that she wishes to conclude the grievance **within five workdays of receipt of this ruling**. EDR's rulings on matters of compliance are final and nonappealable.⁹

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⁵ Certain well-established and applicable legal privileges recognized by courts in litigation will constitute just cause for nondisclosure under the grievance procedure without the need to balance competing interests. *See, e.g.*, EDR Ruling No. 2002-215 (discussing attorney-client privilege).

⁶ *See, e.g.*, EDR Ruling No. 2010-2372.

⁷ Va. Code § 2.2-3003(E); *see Grievance Procedure Manual* § 8.2.

⁸ *Grievance Procedure Manual* § 8.2.

⁹ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).