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COMPLIANCE RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2025-5887
May 16, 2025

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

FACTS

On or about April 14, 2025, the grievant submitted two separate grievances to the agency: 1) a grievance about her receipt of a Step 1 Informal Counseling Memorandum, and 2) a grievance about alleged charge nurse scheduling inequities and inconsistencies. The first-step respondent provided a response dated April 24, 2025. While the first-step respondent appears to have completed the appropriate section on both Grievance Forms, the written response only addressed the Step 1 Informal Counseling Memorandum. On April 25, 2025, the grievant notified the chief human resources officer (CHRO)¹ about alleged noncompliance with the grievance procedure. The grievant asserted that the first-step respondent had not responded to her grievance about the nurse scheduling at all, that there had been no meaningful response to her grievance about the Step 1, that the first-step respondent had not engaged in a good faith resolution process (by not meaningfully addressing the specific concerns raised about the Step 1), and that the agency had failed to produce documentation the grievant had requested. The CHRO responded to the grievant’s allegations on May 2, 2025, stating that the agency was in compliance with the grievance procedure. In support of this position, the CHRO stated that the “informal or Step 1 Counseling does not qualify as an ‘adverse employment action’ that would grant employees access to the grievance process. As such, the response you received was not required under the Grievance Procedure Manual but offered to keep the lines of communication open in order to move towards resolution.” Similarly, the CHRO stated that the grievance procedure “obligates agencies to provide grievance-related documents upon request only when a grievance is qualified for hearing or accepted as meeting procedural requirements. The action being challenged is a Step 1 informal counseling and would not be eligible for a hearing if advanced through all three steps of the formal grievance process. Therefore, the obligation of providing documents does not apply.” As the

¹ The agency appears to have delegated agency head authority under the grievance procedure to the CHRO.

grievant does not accept or agree with the noncompliance response by the CHRO, the grievant has sought this ruling to seek the agency's compliance with the grievance procedure.

DISCUSSION

While this ruling will address the particulars of compliance in this case and the appropriate next steps for the grievances at issue, EDR is compelled, based on the grievant's submission, to clarify certain parameters of the grievance procedure that appear to have been misstated by the CHRO. The *Grievance Procedure Manual* states that “[a]ssuming an employee has access to the grievance procedure, *any* management actions or omissions may be grieved, at least through the management steps”² While the CHRO appears to state that a grievance must challenge an adverse employment action for an employee to have access to the grievance procedure, that is not the case.³ If an employee is raising an issue that affects their employment personally and directly, then the grievance procedure is available to the employee to have their concerns addressed at least through the management steps, regardless of whether the issues raised are adverse employment actions.⁴ Furthermore, once a grievance is properly initiated, the document request provisions apply regardless of the subject matter of the grievance. No provision of the Code or the *Grievance Procedure Manual* makes the document request provision applicable only for cases that advance to a hearing.⁵ A grievant can request records from an agency even if the grievance does not challenge an adverse employment action.

Based on this discussion above, the CHRO's response contains statements about the grievance procedure that are not accurate. However, it appears that notwithstanding the CHRO's statements, the grievant was permitted to proceed with the management resolution steps so far and the agency has responded to her document request, providing requested records. We would commend the agency for doing so in these respects, though we would also invite the agency's attention to the above discussion so that the requirements of the grievance procedure will be clear for future cases and proper guidance can be provided to employees.⁶

Transitioning to address the particular issues in this case, it would appear that there is no dispute that the grievant submitted two separate grievances to the agency. The *Grievance Procedure Manual* states that the step respondent “must address the issues and the relief requested and should notify the employee of their procedural options.”⁷ While the step respondent is not required to respond to each and every point or factual assertion raised by the employee, they must generally address each issue raised and the requested relief.⁸ Although the first-step respondent appears to have completed the applicable section on both Grievance Forms, the content of the response attachment only addressed the Step 1 counseling, albeit briefly. While the grievant may not agree with the Step 1 response or how the step respondent addressed this grievance, having reviewed the response in the context of the particular facts surrounding this case, EDR concludes

² *Grievance Procedure Manual* § 2.4 (emphasis in original).

³ See *id.* § 2.3. EDR is aware of no information to suggest that the grievant is not an employee with access to the grievance procedure.

⁴ *Id.* § 2.4. The grievance would also have to meet the initiation requirements listed in Section 2.4, but none of these require a challenge to an adverse employment action.

⁵ See Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

⁶ To the extent the agency has any questions or seeks further clarification, please feel free to contact EDR at any time.

⁷ *Grievance Procedure Manual* § 3.1.

⁸ E.g., EDR Ruling No. 2018-4718; EDR Ruling No. 2015-4155.

that it is substantially compliant with the grievance procedure.⁹ However, the first-step respondent has not complied with the grievance procedure because there does not appear to have been any response to the issues raised in the grievance about charge nurse scheduling. EDR's directives about how to resolve this matter will be discussed below.

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.”¹⁰ 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.”¹¹ 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.¹² 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 applicable legal privilege,¹³ 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.¹⁴ 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.”¹⁵

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

⁹ The step response with respect to the Step 1 counseling represents what EDR would generally describe as the minimally required response to a grievance about a counseling memo or disciplinary action. Such a response generally complies with the grievance procedure, but does not always help inform the grievant, correct misconceptions, or otherwise allow the grievant to feel heard. EDR has no way of knowing at this stage whether the grievant is raising legitimate concerns in her grievance about the Step 1 or whether these have been ongoing matters raised and addressed before. However, it would appear that the grievant does raise questions that demonstrate at a minimum a lack of clarity about certain matters that likely would necessitate further discussion or elucidation. EDR would hope that such uncertainty will be addressed further, either in this grievance or otherwise, to avoid future issues.

¹⁰ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

¹¹ *Grievance Procedure Manual* § 9.

¹² See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

¹³ 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).

¹⁴ See, e.g., EDR Ruling No. 2010-2372.

¹⁵ Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

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.¹⁶

On May 2, 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 confirmation that there were no further documents in certain categories she had requested. The agency has since stated to EDR that the agency has no further documents that are applicable to the grievant's original document request.¹⁷ As such, EDR finds that the agency has been compliant with regard to that request.

The grievant has additionally requested that a decision be made in her favor in this case due to the agency's alleged noncompliance. Although the grievance statutes grant EDR the authority to render a decision on any qualified issue against a noncompliant party in cases of substantial noncompliance with the grievance procedure,¹⁸ we favor 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. The agency's actions here do not rise to the level that would justify a finding of substantial noncompliance or the extreme sanction of EDR awarding substantive relief in favor of the grievant at this time. Providing the agency another opportunity to come into compliance by a specific deadline before considering sanctions is consistent with EDR's approach. Accordingly, the relief requested by the grievant is denied.

CONCLUSION

In consideration of the above, EDR finds that the agency has complied with some portions of the grievance procedure (notwithstanding certain misstatements about the process) and not complied with others. Although the first-step respondent did not properly respond to one of the grievances and an appropriate resolution would be to return the grievance to that respondent for a compliant response, based on our assessment of the surrounding factors, we do not believe that is the proper outcome. Instead, EDR directs that the grievances proceed to the second resolution step, to which the grievant has already submitted documentation to advance, for the required meeting and written response that will address both grievances. Given the nature of the concerns, and depending on what information is presented during the second step meeting, EDR would recommend that the resulting second-step response substantively address the questions raised in both grievances.

Requests for compliance rulings general place the grievance process on hold while EDR considers the request.¹⁹ Accordingly, these grievances and all related timelines have been on hold while this matter has been pending with EDR. As it relates to the grievant's new request for documents, EDR finds that the timeline for the agency's response shall commence with the issuance of this ruling. Thus, a response should be provided to the grievant within the timeframes established in Section 8.2 of the *Grievance Procedure Manual* from the date of this ruling.

¹⁶ *Grievance Procedure Manual* § 8.2.

¹⁷ The agency has informed EDR that the grievant has subsequently submitted a second request for records. However, that records request is not the subject of this compliance ruling request and will not be addressed herein.

¹⁸ Va. Code § 2.2-3003(G).

¹⁹ *Grievance Procedure Manual* § 6.1.

Similarly, the parties should consider the grievance advanced to the second step as of the date of this ruling. As such, the second-step respondent must schedule a meeting with the grievant **within five workdays of receipt of this ruling**.²⁰

EDR's rulings on matters of compliance are final and nonappealable.²¹

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²⁰ *Id.* § 3.2. However, with the pending document request, if the grievant were to request a hold on the grievance process until the documents are received, the grievance procedure allows the grievant to make such an election. *See Grievance Procedure Manual* 8.2. If such a hold is put in place, the second step meeting would be appropriately delayed.

²¹ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).