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## **COMPLIANCE RULING**

In the matter of the Virginia Department of Corrections  
Ruling Numbers 2025-5894, 2025-5895  
May 21, 2025

The Virginia Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) in relation to the grievant’s two January 30, 2025 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 his grievances.

### **FACTS**

On or about January 30, 2025, the grievant initiated two grievances with the agency. On or about March 21, 2025, the agency issued its third-step responses to both grievances. Having received no indication on whether the grievant intended to appeal or conclude either grievance, on April 22, the agency notified the grievant of his noncompliance regarding each grievance via two separate emails. In the emails, the agency notified the grievant that he was out of compliance with the time requirements of the grievance procedure and that he should correct the noncompliance by submitting his election to advance or conclude the grievances within five workdays of receipt of the emails. On May 19, having received no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the two grievances.

### **DISCUSSION**

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.<sup>2</sup> 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, which may in turn order the party to

<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See id.*

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 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.<sup>3</sup>

In this case, the available facts show that, contrary to the grievance procedure's requirements, the grievant has not advanced or concluded his two grievances within five workdays of receiving the agency's most recent management step responses.<sup>4</sup> The grievant has not indicated his intent in any way since the third-step responses were issued on or about March 21, 2025. Moreover, the grievant has not advanced or concluded the grievances since receiving the agency's notices of noncompliance. Because the grievant has apparently neither advanced nor concluded his grievances at this time, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within 10 workdays of the date of this ruling** by notifying his human resources office in writing that he wishes to advance or conclude his two grievances. If he 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.<sup>5</sup>

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<sup>3</sup> 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 to be 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.

<sup>4</sup> See *Grievance Procedure Manual* § 3.3.

<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).