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**COMPLIANCE RULING**

In the matter of the Department of Medical Assistance Services  
Ruling Number 2025-5829  
February 12, 2025

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 1, 2024 grievance with the Department of Medical Assistance Services (“the agency”).

**FACTS**

On or about November 1, 2024, the grievant initiated a grievance with the agency about their performance evaluation. At the time, the grievant had another active grievance, which is dated October 18, 2024. The agency states that it consolidated these grievances and they were addressed together in the second step meeting and response to the October 18 grievance. However, EDR has not identified correspondence that explained this contemporaneously with the meeting, and the second step response to the October 18 grievance does not reference the November 1 grievance.<sup>1</sup> Indeed, it appears that following receipt of the second step response, the grievant sought to have the November 1 grievance addressed in a meeting. Additionally, no responses or further notation was made on the Grievance Form A in the November 1 grievance.

The agency also contends that the matters were resolved by agreement with the grievant. However, EDR has not been presented with documentation that reflects such an agreement or the grievant’s decision to withdraw or conclude the November 1 grievance. It does appear that the agency has re-issued the grievant’s performance evaluation with changes made. The grievant still appears to contest the evaluation. The grievant has sought this ruling to address alleged noncompliance by the agency in failing to respond to the November 1 grievance.

**DISCUSSION**

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other

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<sup>1</sup> Additionally, the agency head’s determination included with the October 18 grievance does not seem to describe consolidated grievances or the November 1 grievance specifically.

<sup>2</sup> *Grievance Procedure Manual* § 6.3.

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.<sup>3</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, 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 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>4</sup>

In this case, EDR has not been presented with documentation that reflects a response by an agency step respondent in compliance with the grievance procedure in the November 1 grievance. As such, it appears that the appropriate step respondent has not yet responded to the grievance within five workdays of receipt, as required by the grievance procedure.<sup>5</sup> EDR therefore orders the agency to correct the noncompliance **within five workdays of the date of this ruling** by the appropriate step respondent responding to the grievance in writing per the requirements of the grievance procedure.<sup>6</sup>

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>

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<sup>3</sup> See *id.*

<sup>4</sup> 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.

<sup>5</sup> See *Grievance Procedure Manual* § 3.1.

<sup>6</sup> The appropriate step respondent would appear to be at the first step. However, given how the underlying matters have progressed, with a revised evaluation being issued, the parties could agree to advance the grievance to begin at the second or third step, or treat the grievance under the expedited process.

<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).