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**COMPLIANCE RULING**

In the matter of Department of Corrections  
Ruling Number 2025-5842  
March 7, 2025

The 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 November 28, 2022 grievance. 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 grievance.

**FACTS**

On or about November 28, 2022, the grievant initiated a grievance with the agency. On March 14, 2023, the agency requested an extension for the third-step response, to which the grievant agreed. On March 24, 2023, the agency issued its third-step response. Having received no indication on whether the grievant intended to appeal or conclude the grievance, on or about January 7, 2025, the agency sent the grievant a noncompliance letter to one of his two personal email addresses. In the letter, 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 grievance within five workdays. The agency followed up on January 29, ensuring that the grievant had received the letter by resending it to both of the grievant’s personal email addresses. On March 4, 2025, having received no further response from the grievant, the agency requested that EDR issue a compliance ruling allowing the agency to administratively close the grievance.

**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

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

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

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 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 grievance within five workdays of receiving the agency's most recent management step response.<sup>4</sup> Notwithstanding the proper way to appeal or conclude the grievance via the applicable section of Grievance Form A, the grievant has not indicated his intent in any way since the third-step response was issued in 2023. Therefore, because the grievant has apparently neither advanced nor concluded his grievance 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 grievance. If he does not do so, the agency may administratively close the grievance without any further action on its part. The grievance 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).