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COMPLIANCE RULING

In the matter of the University of Virginia
Ruling Number 2026-5930
August 1, 2025

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) in relation to his July 11, 2025 grievance with the University of Virginia (“the university” or “the agency”).

FACTS

On or about July 11, 2025, the grievant initiated this grievance with the university to address issues of retaliation and compensation. On or about July 16, the grievant advanced the grievance to the second resolution step; however, he was informed that the second-step respondent was out of the country and would not return until July 28. On July 17, the university stated that the grievance would be reviewed by the second-step respondent upon his return. However, the grievant asserted that the university must nonetheless adhere to the five-workday deadline outlined in the grievance procedure. He added that he was willing to have the university find a replacement for the unavailable step respondent. In their July 22 response, the university did not offer a replacement for the unavailable step respondent but stated that if the grievant was unwilling to wait for the step respondent to return, he could skip over the second step to the third resolution step. The grievant responded by stating he did not want to waive his right to the second resolution step. As the parties were apparently at impasse, this ruling has been sought to resolve the procedural issues in the grievance.

Since this ruling was requested, on July 28, the original second-step respondent responded to the grievant’s appeal to the second step and a fact-finding meeting has been held, along with the second-step response being issued.

DISCUSSION

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency’s Human Resources Office and is also available on EDR’s website. Each designated step respondent shall have the authority to provide the grievant with a remedy, subject to the agency head’s

approval.¹ Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step respondents. This assures that each agency's management resolution step respondents are appropriate and known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.

An agency's careful designation of step respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step respondents have an important statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step respondent and should put any agreement in writing. Absent an agreement between the parties, the agency must adhere to the designated list of step respondents. However, there are times when modification from the default steps is necessary and appropriate, such as when a step-respondent is unavailable due to an extended leave of absence.

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² 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.³ 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 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.⁴

Here, the grievant alleges noncompliance by the university in that they did not issue their second-step response within five workdays as required by the grievance procedure. There was no noncompliance in this instance because the second-step respondent was on approved leave. The grievance procedure defines a workday as the “[n]ormal work schedule (excluding authorized leave time) for the individual responsible for taking the required action.” Because this definition excludes authorized leave time by the individual responsible for taking the required action, i.e., the second-step respondent here, no workdays elapsed while the second-step respondent was on leave. Taking this provision to an extreme, it could mean that a step respondent on extended leave would bring a grievance to a halt unnecessarily. In such situations, it does make sense to have a substitute step respondent designated. However, the second-step respondent's leave period in this

¹ See Va. Code § 2.2-3003(D).

² *Grievance Procedure Manual* § 6.3.

³ *See id.*

⁴ 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.

case was not so extended such that a substitute step respondent was reasonably necessary. Although it is understandable that the grievant would prefer to have had a meeting and response within the original five workday period after proceeding to the second step, EDR would also acknowledge that the second-step respondent proceeded with the grievance immediately upon his return to work.

Since the request of this compliance ruling, the original second-step respondent has returned from his leave of absence, has held the fact-finding meeting with the grievant, and has issued his second-step response. Consequently, the next step is for the grievant to choose to advance or conclude his grievance.

CONCLUSION

For the reasons set forth above, within five workdays of receipt of this ruling, the grievant must opt on the designated Grievance Form A to either conclude or appeal the grievance to the third step according to Section 3.2 of the *Grievance Procedure Manual*.

EDR's rulings on matters of compliance are final and nonappealable.⁵

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