



GRIEVANCE AND COMPLAINT PROCEDURES POLICY

EDD Revision Date: 4/14/04, 9/3/08

WDB Review Date: 7/15/04, 9/18/08; 12/17/15; 12/15/16; 5/24/18

EXECUTIVE SUMMARY:

Purpose:

This document establishes the policy of the Workforce Development Board of Madera County on the development, maintenance and implementation of programmatic grievance and complaint procedures. This policy provides guidance and established the procedures regarding grievances and complaints alleging noncriminal violations of Workforce Innovation and Opportunity Act (WIOA) Title I requirements. The policy applies to all Title recipients and subrecipients, and is effective immediately.

STATE IMPOSED REQUIREMENTS:

The policy contains from state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

Local Area

Effective Date:

This policy is effective on the date of issuance of final guidance from the Employment Development Department and California Workforce Development Board

REFERENCES:

- WIOA (Public Law 113-128) Section 181 (c)
- Title 20 CFR Sections 683.600 and 683.610
- Title 29 CFR Section 38.9
- Title 22 of the California Code of Regulations (CCR), Sections 5050-5070

BACKGROUND:

Under WIOA Section 181(c), each state, Local Area (Local Area), and direct recipient of Title I funding is required to establish and maintain procedures for participants and other interested parties to file grievances and complaints alleging violations of WIOA Title I requirements. These procedures must be made available to all relevant parties within the Local Area, including America's Job Center of California (AJCC) partners, service providers and program participants.

This policy contains the guidance and procedures regarding the receipt, hearing, resolution, and appeals process of WIOA Title I grievances and complaints at the local, state, and federal level in accordance with Title 20 CFR Sections 683.600 and 683.610. These procedures apply only to programmatic complaints alleging violations of WIOA Title I requirements in the operation/administration of WIOA programs and activities. For information on complaints alleging criminal fraud, waste, abuse, or other criminal activity see Workforce Services Directive WSD12-18, Incident Reporting. Lastly, for appeals of administrative or financial sanction(s) on a Local Area resulting from monitoring, investigations, or audits, see Workforce Investment Act Directive WIAD05-17, Audit Resolution.

POLICY AND PROCEDURES:

General Requirements

The procedures set forth in this policy are those that must be used by all Local Areas in the development and implementation of their local grievance, complaint, and hearing procedures, and govern the treatment and handling of all grievances or complaints connected with WIOA Title I grant recipients and subrecipients.

Grievances or complaints must be filed within one year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, and discrimination.

Furthermore, all recipients and subrecipients of WIOA Title I funds must make reasonable efforts to ensure their policies and corresponding information will be understood by affected participants and individuals, including youth and individuals with limited English proficiency. These efforts must comply with the language requirements of Title 29 CFR Section 38.9.

WIOA Title I Governor's Discretionary and Rapid Response subrecipients (except Local Areas) are not required to develop procedures for responding to grievances and complaints from participants and interested parties, Rather, these subrecipients must adopt the Employment Development Department's (EDD) state level grievance and complaint procedures, and must designate an individual who will be responsible for publishing the procedure.

Definitions

Complainant - any participant or other interested or personally affected party alleging a non-criminal violation of WIOA Title I requirements.

Complaint file - a file that is maintained in a central location within each office which includes a copy of each complaint filed along with pertinent documentation.

Days - consecutive calendar days, including weekends and holidays.

Grievance or complaint - a written expression by a party alleging a violation of WIOA Title I, regulations promulgated under WIOA, recipient grants, subagreements, or other specific agreements under WIOA.

Hearing Officer - an impartial person or group of persons that shall preside at a hearing on a grievance or complaint.

Local Area - the Workforce Development Board of Madera County's administrative entity and any subrecipients to whom the administrative entity has delegated the complaint and grievance resolution process.

Participant - an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by WIOA.

Participant case file - either a hard copy or an electronic file.

Recipient - an entity to which a WIOA grant is awarded directly from DOL to carry out a program under Title I of WIOA.

Service Provider – a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, employment, or supportive services to WIOA participants.

State Review Panel - an entity within EDD composed of representatives from EDD's Compliance Review Office, Legal Office, and Director's Office. This panel shall review and approve or disapprove decisions and recommendations regarding grievances or complaints.

Subrecipient - an entity to which a recipient awards funds and is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided.

Policy:

It is the policy of the State of California that:

- ***The principles and procedures set forth in WSD08-4 shall be used by all California LWDA's in the development of local-level grievance and hearing procedures; and***
- ***The principles and procedures set forth in WSD08-4 shall govern the treatment and handling of all grievances or complaints in connection with all WIOA Title I grant programs and activities conducted by the State, or pursuant (directly or indirectly) to subgrants from the State.***

The Workforce Development Board of Madera County concurs with this policy and has approved the local policy and procedures contained in this document.

Local Level Grievance and Complaint Resolution Procedures

The Workforce Development Board of Madera County has established this procedure for resolving grievances and complaints alleging a violation of WIOA Title I. Local Area These local procedures are intended to resolve issues related to WIOA Title I grant programs

operated by the Local Area's administrative entity or its subrecipients. The local procedures include the following:

1. Notice to Affected Parties

Initial and continuing notice of the local grievance and complaint procedures and instructions on how to file a complaint must be:

- Posted in a public location and be made available to any interested parties and members of the public.

Made available to each participant. A copy of the written description of the local grievance and complaint procedure shall include (1) Notification that the participant has the right to file a grievance or complaint at any time within **one year** of the alleged violation; (2) Instructions and timeline for filing a grievance or complaint; and (3) Notification that the participant has the right to receive technical assistance from the Local Area in filing the grievance or complaint; (4) Notification that the participant may file an appeal or request a separate review by EDD if they experience an incident of restraint, coercion, or reprisal as a result of filing a complaint.

Where a hard copy case file is maintained, staff must include a signed copy of an acknowledgement of receipt of the local grievance and complaint procedures in each participant's case file. Where an electronic case file is maintained, staff must enter a case note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it.

The Local Area has the responsibility to provide technical assistance to the complainants, including those grievances or complaints against the LWDA. Such technical assistance includes, but is not limited to, providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIOA, federal regulations, state laws and regulations, local procedures and/or contracts, and providing clarification and interpretation of relevant provisions. This requirement shall not be interpreted as requiring the Local Area to violate any rules of confidentiality.

2. Filing a Grievance or Complaint

The official filing date of the grievance or complaint is the date it is received by the Local Area, service provider, AJCC partners, or subrecipients. The filing will be considered a request for a hearing, and the Local Area shall issue a written decision within 60 days for the filing of the grievance or complaint. The Local Area will send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be writing, signed, and dated. For resolution purposes, the Workforce Development Board of Madera County requires that the following information be obtained or provided for all complaints:

- Full name, telephone number, and mailing address of the complainant;

- Full name, telephone number, and mailing address of the respondent;
- A clear and concise statement of the facts and dates describing the alleged violation;
- The provisions of the WIOA, federal regulations, grant, or other agreements under the WIOA, believed to have been violated;
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulations, or contract; and
- The remedy sought by the complainant.

The absence of any of the requested information shall not be a basis for dismissing the grievance or complaint.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues unless the complainant withdraws and resubmits the complaint. However, the one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints that are refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision.

3. Informal Resolution

The Local Area shall notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either party in the grievance or complaint to exert good faith efforts shall not constitute a basis for dismissing the grievance or complaint, nor shall this be considered to be a part of the facts to be judged in the resolution process. The Local Area must assure that all grievances or complaints not resolved informally or not withdrawn are given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

If a complainant and respondent are able to reach an informal resolution, a notice of resolution must be sent to the complainant and entered into the complaint file. If the information resolution leads to an impasse between the complainant and respondent, the complainant may choose to not proceed to a hearing. If this occurs, a notice of impasse must be sent to the complainant and entered into the complaint file. In the event of resolution or impasse, the Local Area must request the complainant to provide a written withdrawal of the complaint within 10 days of receipt of the notice of resolution or impasse.

4. Local Level Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of filing of a grievance or complaint:

a. Notice of Hearing

The Local Area must notify the complainant and the respondent in writing of the hearing at least 10 days prior to the date of the hearing. The 10-day notice may be shortened with the written consent of both parties. The hearing notice shall be in writing and contain the following information:

- The date of the notice, name of the complainant, and the name of the party against whom the grievance or complaint is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violation(s). The statement must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

b. Conduct of Hearing

An impartial hearing officer shall conduct the hearing. All members of the Local Workforce Development Board and the local Chief Elected Official(s) are considered interested parties and cannot legally conduct an impartial hearing (Title 20 CFR Preamble Page 56212). The Local area will seek impartial hearing officers from among the staff of legal offices or personnel departments of local municipalities or counties that will not be directly affected by, or will not implement the final resolution of, a specific grievance or complaint.

The hearing will be conducted in an informal manner and not bound by strict rules of evidence. All hearings must follow all applicable procedures established by the Local Board. Both parties will have the right to present written and/or oral testimony and arguments; the right to call and question witnesses in support of their position; the right to examine records and documents relevant to the issues; and the right to be represented at their own cost. The hearing will be recorded electronically or by a court reporter.

c. Decision of Hearing

The hearing officer shall provide a written decision to the Local Area. The Local Area shall mail the written decision to both parties by first class mail no later than 60 days after the filing date of the grievance or complaint. The decision shall contain the following information:

- The names of the parties involved;

- A statement of the alleged violation(s) and issues related to the alleged violation;
- A statement of the facts;
- The Local Area's decision and the reasoning;
- A statement of corrective action or remedies for violations, if any, to be implemented; and
- Notice of the right of either party to request an appeal of the decision by the State Review Panel within 10 days of the receipt of the decision.

5. Local Level Appeal

If a complainant does not receive a decision within 60 days of the filing date of the grievance or complaint, or receives an adverse decision, the complainant has the right to file an appeal with the State. See the Subsection below entitled *Appeals of Local Level Decisions or Requests for EDD Review*.

State Level Grievance and Complaint Resolution Procedures

As required under Title 20 CFR Section 683.600(d), the State must establish procedures for resolving appeals of decisions issued at the local level, grievances or complaints regarding statewide workforce programs, and grievances or complaints alleging state violations of WIOA requirements.

Appeals of Local Level Decisions or Requests for EDD Review

If the local Area has issued an adverse decision or failed to follow the procedures in this policy, the complainant may file an appeal with the state. Additionally, if the Local Area has not issued a decision within the 60 day time limit, or if there has been any incident(s) of restraint, coercion, or reprisal at the local level as a result of filing a grievance or complaint, the complainant may file a request for EDD review.

The appeal or request for EDD review must be in writing, signed, and dated by the complainant and include the following information:

- The full name, telephone number, and mailing address of the complainant and the Local Area's administrative entity.
- A statement of the basis of the appeal or request for EDD review.
- Copies of relevant documents, such as the complaint filed with the Local Area and their decision, if any was received.

Appeals must be filed or postmarked within 10 days from the date on which the complainant received an adverse decision from the Local Area. Requests for EDD review must be filed or postmarked within 15 days from either of the following:

- The date on which a complainant should have received a decision regarding a locally filed complaint, which is defined as five days from the date the decision was due.
- The date on which an instance of restraint, coercion, or reprisal was alleged to have occurred as a result of filing the complaint.

Complainants must submit appeals or requests for EDD review to the following address:

Chief, Compliance Review Office, MIC 22-M
 Employment Development Department
 P.O. Box 826880
 Sacramento, CA 94280-0001

If an evidentiary hearing was held at the local level, the Compliance Review Office shall request the record of the hearing from the Local Area and shall review the record without scheduling an additional hearing. The Local Area is to provide written transcripts of any audio or visual recordings of the hearings via overnight mail. Within 10 days of receipt of the grievance or complaint, the Compliance Review Office shall notify the complainant and respondent of the opportunity for an informal resolution and proceed with the informal resolution process.

If an evidentiary hearing was not held at the local level, the Compliance Review Office shall instruct the Local Area to hold a hearing within 30 days of receipt of the appeal or request for EDD review. If the Local Area refuses to hold a hearing within the required timeframe, the EDD shall schedule an evidentiary hearing before an impartial hearing officer within the 30 day timeframe.

State Level Grievances and Complaints

All grievances or complaints alleging noncriminal, state violations of WIOA Title I requirements, or grievances or complaints by individuals or interested parties affected by statewide workforce programs shall be filed in writing with the Chief of the Compliance Review Office. The official filing date of the grievance or complaint is the date it is received by the Compliance Review Office. The filing shall be considered a request for a hearing and the State Review Panel shall issue a written decision within 60 days of the official filing date. The Compliance Review Office shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, dated, and signed by the complainant. The state will attempt to obtain the following information for all complaints. However, the absence of any of the requested information will not be used as a basis for dismissing the grievance or complaint.

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, federal regulations, state laws or regulations, grant, or other agreements under WIOA believed to have been violated.

- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

The Chief of the Compliance Review Office or their designee shall review the grievance or complaint and notify the complainant and respondent of the opportunity for an informal resolution within 10 days of receipt. If the state cannot resolve the grievance or complaint informally, a hearing will be held.

EDD Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of the grievance or complaint. The complainant, respondent, and Local Area (in cases of local level appeals and requests for EDD review) shall be notified in writing of the hearing at least 10 days prior to the hearing. The hearing shall be conducted by an impartial officer. The hearing notice shall contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

The EDD hearing shall be conducted in an informal manner without the application of strict rules of evidence. Both parties shall have the right to be represented, present written and/or oral testimony under oath and arguments, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing shall be recorded either electronically or by a court reporter.

Title 22 CCR regulates the responsibilities and processes and EDD administrative law judges and hearings and as such, applies to the EDD hearings and hearing officers described in state guidance. Title 22 CCR Sections 5050 through 5070 outline all applicable state laws and must be adhered to by the EDD hearing officers. Examples of subjects addressed include: special hearing accommodation, electronic hearings, ex parte communications, and consolidation of similar cases. All references to “administrative law judge” hold the same meaning as “hearing officer” in regard to these regulations.

State Review Panel

Following completion of the EDD hearing, the EDD hearing officer shall make a written recommendation to the State Review Panel. The hearing officer’s recommendation shall contain the following information:

- The names of the parties involved;

A statement of the alleged violation(s) and related issues;

- A statement of the facts;
- The EDD hearing officer's decision and the reasons for the decision; and
- A statement of the corrective action or remedies for violations, if any, to be implemented.

The State Review Panel shall not conduct a new evidentiary hearing, but shall review the record established by either the local level hearing or the EDD hearing. The State Review Panel shall issue a decision on the basis of the information contained in the record. The State Review Panel may accept, reject, or modify the EDD hearing officer's recommendation or the decision of the Local Area, and shall issue a written decision to the concerned parties within 60 days of EDD's receipt of the local level appeal, request for EDD review, or grievance or complaint.

The State Review Panel shall send a written decision to both the complainant and the respondent by certified mail. The decision shall contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and related issues;
- A statement of the facts;
- The State Review Panel's decision and the reasons for the decision;
- A statement of the corrective action or remedies for violations, if any, to be taken; and
- A notice of the right of either party to file an appeal to the U.S. Secretary of Labor.

Remanded Local Grievances or Complaints

Grievances or complaints filed directly with the State related to Local Area programs will be remanded to the Local Area. Reviews that reveal a trial issue, such as the hearing officer being an interested party, will be remanded to the Local Area for a retrial of the grievance or complaint.

Federal Level Appeal Process

If the State Review Panel has issued an adverse decision regarding a grievance or complaint, or has not issued a decision within 60 days of receipt of a local level appeal, request for EDD review, or grievance or complaint, the complainant may file an appeal with the Secretary. This appeal process applies to grievances and complaints that originated at the state or local level.

Appeals of an adverse decision must be filed within 60 days of receipt of the adverse decision from the State Review Panel. In case where the State Review Panel did not issue a decision, the complainant must file an appeal within 120 days of either of the following:

- The date on which the complainant filed the appeal of a local level decision or request for EDD review with the State.
- The date on which the complainant filed the grievance or complaint with the state.

All appeals to the Secretary must be sent to the DOL National Office via certified mail with return receipts requested. Copies of the appeal must simultaneously be provided to the DOL Employment and Training Administration (ETA) Regional Administrator and the respondent. Mailing addresses for the DOL National Office and ETA Regional Administrator are included below:

DOL National Office

Secretary of Labor
Attn: Assistant Secretary of ETA
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

ETA Regional Administrator

Office of Regional Administrator
U.S. Department of Labor
P.O. Box 193767
San Francisco, CA 94119-3767

Grievances or complaints filed directly with the Secretary that were not previously filed with the Local Area and/or state will be remanded to the Local Area or state, as appropriate.

The Secretary shall issue a final determination no later than 120 days after receiving the appeal.

Remedies

Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to the following:

- **Suspension or termination of payments under WIOA Title I.**
- **Prohibition of placement of a participant with an employer that has violated any requirement under WIOA Title I.**
- **Reinstatement of an employee, where applicable, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment.**

- **Other equitable relief, where appropriate.**

None of the above shall be construed to prohibit a complainant from pursuing a remedy authorized under another federal, state, or local law for a violation of WIOA Title I.

ACTION:

All recipients and subrecipients of WIOA Title I funding through the Workforce Development Board of Madera County shall utilize the grievance and complaint procedures specified in this policy or ensure that any policies or procedures established by the recipient or subrecipient are in accordance with these requirements.

INQUIRIES:

Please direct inquiries about this directive to your local EO/Complaint Officer at (559) 662-4500.