



Oklahoma Office of Workforce Development
900 N. Portland Ave.
Oklahoma City, OK 73107

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #16-2017

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Erin E. Risley-Baird, Executive Director

DATE: September 12, 2017

SUBJECT: Grievance and Complaint Process

PURPOSE: The Oklahoma Office of Workforce Development (OOWD), as the Governor's chosen entity to administer the Workforce Innovation and Opportunity Act (WIOA), provides this issuance as a resource to local areas and other stakeholders to communicate Oklahoma's instructions for the grievance and complaint process under WIOA.

REFERENCES:

- The Workforce Innovation and Opportunity Act (WIOA) (29 USC § 3241(c))
- 20 Code of Federal Regulations (CFR) 683 Subpart F
- 29 CFR 37.35
- 20 CFR 38.54

BACKGROUND: WIOA requires each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, to establish and maintain a procedure for participants and other interested parties to file grievances and complaints of a non-criminal nature alleging violations of the requirements of title I of WIOA.

The grievance and complaint procedures in this policy apply to programmatic grievances and complaints, per 29 USC §3241(c) and do not apply to nondiscrimination and equal opportunity complaints under 29 USC § 3248. Such complaints must be handled with the procedures set forth in that regulatory part.

Questions about or complaints alleging a violation of the nondiscrimination and equal opportunity provisions of WIOA Sec. 188 may be directed to the State Equal Opportunity (EO) officer at: eoofficer@osuokc.edu

RESCISSIONS OWDI #05-2012; OETI 01-2011	EXPIRATION DATE Continuing
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Grievance and complaint procedures do not apply to complaints and reports of criminal fraud and abuse addressed under WIOA. Information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately to either the corresponding Regional Inspector General for Investigations or to the Department's Incident Reporting System located at:

The Department of Labor Office of Inspector General
Office of Investigations, Room S5514
200 Constitution Avenue NW
Washington, DC 20210

Such complaints must be filed along with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756. The website is <http://oig.dol.gov/contact.htm>.

Grievance and complaint procedures within this policy do not apply to non-designation of local areas, denial or termination of eligibility as a training provider, testing and sanctioning for use of controlled substances, or sanctions for substantial violations or performance failures by a local area.

Nothing in this policy precludes a complainant from pursuing a remedy authorized under another Federal, State, or local law.

DEFINITIONS:

Complainant: any participant or other personally interested or personally affected party, group, or agency alleging a non-criminal violation of the requirements of WIOA Title I or a related agreement or service

Interested Parties: sub-grantees, subcontractors, service providers, employees, One-Stop partners, and training providers

Participant: an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by title I of WIOA

MESSAGE: Program complaints are nondiscriminatory, non-criminal complaints involving the proper application of the Workforce Innovation and Opportunity Act regulations and policies at both the local service provider and state level. Complaints may occur for a number of reasons and can arise from anyone being served by the workforce development system or interested parties, including Oklahoma Works (One-Stop) Partners and service providers.

These procedures will be available for use by all individuals and entities; including WIOA Title I grant participants, LWDA staff, subrecipients of LWDA's, and other interested parties. Local

procedures must include "a process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties so provides." (Title 20 CFR 683.600(c)(3)). Additionally, all LWDA's and subrecipients of WIOA Title I grant funds must make reasonable efforts to assure that information about the content of the grievance and complaint procedures will be understood by affected participants and individuals, including youth and those who are limited English-speaking individuals. Such efforts must comply with the language requirements of Title 29 CFR 37.35.

Right to Counsel

At all levels of the grievance or complaint process, complainants have the right to be represented, at their own expense, by a person(s) of their choosing.

Time Restriction on Filing Complaints

Grievances/complaints must be filed within 180 days of the alleged violation. All grievances or complaints, amendments, and withdrawals must be in writing.

Anti-Retaliation

No entity receiving financial assistance under WIOA may discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has filed a complaint, opposed a prohibited practice, furnished information, assisted or participated in any manner in an investigation or hearing.

Confidentiality

To the maximum extent possible, the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the WIOA shall be kept confidential.

Providing information about content of grievance and complaint procedures:

Public notice of the local grievance and complaint procedures must be made available to participants and other interested parties by every entity receiving title I funded services. This must be done by:

- Posting the local procedure in a public location (e.g., website), and
- Making available a copy of the written description of the local grievance and complaint procedure to any participant and other interested party.

Consultation must be offered to provide information about the content of the local grievance and complaint procedures to participants and employees:

- Including in orientations to employees and participants a verbal notification on their rights to file a grievance or complaint with the: WIOA title I service provider, local workforce development area, State, or United States Department of Labor;

- Verbal notification on their rights to receive technical assistance in filing a grievance or complaint;
- Documenting such communication on a notification instrument for employees and program participants; and
- Retaining such notification instruments in individuals' participant or employee files.

Reasonable efforts must be made to ensure that the information on the local grievance and complaint procedures will be understood by participants and other individuals, including youth and those with limited-English speaking ability. This may be accomplished by:

- Providing oral interpretation and written translation of both hard-copy and electronic materials; and,
- Complying with providing services and information in languages other than English, as indicated in 29 CFR 37.35.

Local Area Grievance Procedures

Local area procedures must provide:

- A process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;
- Notification that the complainant has the right to file a grievance or complaint within 30 days of the alleged violation;
- Instruction on the process for how to file the grievance or complaint; and
- Notification that the complainant has the right to receive technical assistance on:
 - Related law and guidance, and
 - How to complete the local process.
- An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;
- A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides;
- A written response to the complainant, notifying him/her of the termination, as well as information on filing an appeal with the State;
- An opportunity for a local level appeal to a State entity when:
 - No decision is reached within 60 days; or
 - Either party is dissatisfied with the local hearing decision; and,
- Notification to the State regarding any grievance filed at the local level.

Direct Recipients Grievance Procedures

Procedures of direct recipients must provide:

- A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's WIOA programs; and
- An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

Contents of the grievance or complaint received at the Local or State level:

- Must contain the following information:
 - Full name, telephone number, mailing address, and e-mail address of the complainant;
 - Full name, telephone number, mailing address, and e-mail address of the respondent;
 - Full names, telephone numbers, mailing addresses, and e-mail addresses of persons who may have knowledge of the facts of the grievance or complaint;
 - Date and with whom the grievance/complaint was filed;
 - A clear and concise statement of the facts describing the alleged violation and the dates and location in which the alleged violation occurred;
 - The statement of facts should include enough information to allow the person or entity to determine whether:
 - There is jurisdiction over the complaint/grievance;
 - The grievance/complaint was timely filed; and
 - The grievance/complaint has merit, i.e., whether the allegations if true, would violate any Title I provisions of WIOA.
 - Provisions of WIOA, the WIOA 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 the WIOA law, regulation, or contract;
 - The remedy sought by the complainant;
 - Signature of the complainant or his or her authorized representative; and
 - If applicable, a copy of the referral of a grievance/complaint filed with the State to remand to the local level for resolution.

State Grievance Procedure:

Title 20 CFR Section 683.600(d) requires the State to provide a process for dealing with grievances and complaints from participants or interested parties affected by the statewide WIOA programs, resolving appeals of decisions issued at the LWDA level, remanding grievances and complaints related to the local WIOA Title I programs to the LWDA grievance process, and affording an opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

Submitting the grievance or complaint:

Complaints will be taken from the complainant, a representative, or other designee by email to workforce@osuokc.edu or mail to:

Oklahoma Office of Workforce Development (OOWD)
Oklahoma State University-Oklahoma City
900 North Portland Avenue
Oklahoma City, OK 73107

The complaint is considered logged at the time of receipt with confirmation given to the complainant via email response. If no email address for the complaint is provided, include a note indicating the best way for the State to communicate with the complainant.

Complaints received are screened and reviewed by staff at OOWD and if appropriate, are remanded to the local level to begin informal resolution. OOWD may provide alternative dispute resolution to assist the parties in reaching an understanding about how to best resolve their differences.

Appeals to the State from Local Areas

- A participant or affected party may file a grievance with the local area. It will be resolved according to the procedures of the local area, established pursuant to 20 CFR §683.600(c).
- An appeal of a local area decision may be filed with the State if:
 - No decision is reached within 60 days from the date the grievance is received at the local area level; or
 - Either party is dissatisfied with the local area hearing decision.
- When the local area does not render a decision within 60 days from the date of receipt of the grievance/complaint, an appeal must be filed with the State within 30 days from the expiration of the 60-day time period.

Informal resolution:

An attempt must first be made to informally resolve the complaint to the satisfaction of all parties. Informal resolution must be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and a letter outlining the terms and conditions of the resolution is attached to the complaint and sent to the parties.

Formal resolution:

When no formal resolution is possible, information is documented and returned to OOWD for further investigation. A determination letter will be issued within 20 days from the date the complaint was filed and sent to the parties. If the determination is not contested, the complaint will be considered resolved.

Hearing:

Any party dissatisfied with the determination from the informal or formal resolution, may appeal in writing within 10 days of the date of determination. The request for a hearing must be filed in writing to workforce@osuokc.edu and to:

Oklahoma Office of Workforce Development (OOWD)
Oklahoma State University-Oklahoma City
900 North Portland Avenue
Oklahoma City, OK 73107

Upon receipt of the request for a State hearing, the Executive Director of OOWD or his/her designee shall review the grievance or complaint and shall provide an opportunity for an informal and formal resolution, if not yet provided. The Executive Director of OOWD or his/her designee shall notify the complainant and the respondent within 10 days of receipt of the grievance or complaint and proceed with the informal resolution process, and then formal resolutions process. If the State cannot resolve the grievance or complaint, then a hearing may be requested.

Hearing procedure:

In any hearing conducted pursuant to a grievance filed under the WIOA, all parties to the grievance shall be afforded an opportunity for a hearing with the Grievance Panel after reasonable notice. Such notice shall include:

- The date, time, and place of the hearing, in writing at least 10 days prior to the date of hearing;
- The original grievance filed and documentation of informal and formal resolution attempts;
- Relevant sections of WIOA or any other federal regulations involved;
- If not in the original filed grievance, a statement of the alleged violations. The statement must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to ensure the grievance is addressed accurately; and,
- The right of the parties to be represented by an attorney or another designated representative (at their own expense).

The hearing is conducted in an informal manner in front of the Grievance Panel with strict rules of evidence not being applicable. Both parties have the right to present written and/or oral testimony and arguments; the right to call and question witnesses; the right to request and examine records and documents relevant to the issues; and the right to be represented. All evidence and a list of witnesses must be made available in advance to all parties seven (7) days prior to the hearing. Prior to the hearing, the Chair of the Grievance Panel will inform the

parties, in writing, the hearing process (i.e., order of arguments, rebuttals, time restrictions, etc). The hearing will be recorded electronically.

The hearing process will be completed within 60 days from the date the appeal/request for hearing was received by OOWD.

Composition of Grievance Panel:

The Grievance Panel will consist of three (3) members who are appointed by the Executive Director of OOWD, along with two (2) alternates.

- Where feasible, the Panel may include a representative from the Governor’s Council for Workforce and Economic Development, a State Agency partner, and a Local Area Staff member of any of the WIOA Core Programs. Alternates may be any combination chosen from any of the above entities, including OOWD staff or hired entities.

The Executive Director of OOWD or his/her designee will oversee the hearing.

Final Decision by Grievance Panel:

Unless precluded by law, informal disposition or resolution may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

If informal disposition or resolution is not achieved, the Grievance Panel shall, within 60 calendar days from the date the complaint was filed, mail electronically and via the United States Postal Service, a written decision to both parties. 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 State Grievance 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 Secretary of Labor, if applicable.

Maintenance of Records:

Recordings and other records shall be maintained for such time so as to protect the record through judicial review, or at least three years. Copies of the electronic recordings shall be provided at the request of any party to the proceeding.

Remedies that may be imposed at the local and state level:

According to WIOA Section 181 (c) (3) remedies that may be imposed for a violation of any requirement shall be limited to:

- Suspension or termination of payments under this title;
- Prohibition of placement of a participant with an employer that has violated any requirement under this title;
- Where applicable, the reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
- Where appropriate, other equitable relief.

Federal appeal:

WIOA allows for a formal appeal to the U.S. Department of Labor (USDOL) if the state has not issued a decision within 60 days after a complaint is filed or the party to such decision received an adverse decision. Federal appeals must be made within 60 calendar days of the receipt of the decision being appealed. USDOL will make a final decision no later than 120 days after receiving a formal appeal. USDOL will only investigate complaints arising through the established procedures. Appeals submitted to USDOL must be submitted by certified mail, return receipt requested to:

Secretary U.S. Department of Labor
 Attention: ASET
 200 Constitution Avenue, NW
 Washington, DC 20210

A copy of the appeal must be simultaneously provided to the opposing party, and the USDOL Regional Office by certified mail to:

Regional Administrator
 U.S. Department of Labor, Employment and Training Administration
 Region IV (Dallas) Office
 525 S. Griffin Street, Room 317
 Dallas, TX 75202

EQUAL OPPORTUNITY AND NONDISCRIMINATION: All providers must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

ACTION REQUIRED: This OWDI is to become a part of the permanent records of all local Workforce Development Boards and shared with all appropriate staff.

INQUIRIES: If you have any questions about this issuance, please contact policy and program staff in the Oklahoma Office of Workforce Development. Contact information can be found at <http://www.oklahomaworks.gov/about/>.