



EASTERN

Workforce Board, Inc.

Proudly serving Adair, Cherokee, McIntosh, Muskogee, Okmulgee, Sequoyah, and Wagoner Counties in Oklahoma

GRIEVANCE AND COMPLAINT PROCESS



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PURPOSE:

This document establishes the policy of the Eastern Workforce Development Board on the development, maintenance and implementation of programmatic grievance and complaint procedures. This policy and related procedures covers complaints alleging non-criminal violations of the requirements of Workforce Innovation and Opportunity Act (WIOA) in the operation of local WIOA programs and activities, and transmits policy governing WIOA Title I related grievance and complaint procedures at the local level.

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.

BACKGROUND:

Title 20 Code of Federal Regulations (CFR) Subpart F Section 683.600 requires that Local Workforce Development Areas (LWDA) and sub recipients of WIOA Title I grant funds comply with the grievance and complaint provisions of the WIOA.

This policy applies to *programmatic grievances and complaints* pursuant to WIOA Section 181(c) and does not address the procedures for processing complaints alleging *discrimination* under WIOA Section 188 and/or Title 29 Code of Federal Regulations (CFR) Part 37. Information and complaints involving allegations of fraud, abuse, or other criminal activity must be reported directly to Department of Labor's (DOL) Office of Inspector General and Employment Development Department's (EDD) Compliance Review Division (CRD) through the procedures for reporting incidents described in WIA Directive WIAD02-3, pending release of new state guidance.

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.

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 EWB executive director, or EWB chairman/board and OOWD complaint division.

Title 20 CFR Section 683.600 requires each LWDA, State, and direct recipient of funds under Title I of WIOA to establish and maintain a procedure for grievances and complaints from participants and other interested parties affected by the local workforce development system, including One-Stop partners, service providers, and the Statewide workforce development programs.

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. (OOWDI #16-2017) Change 1.

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

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, sub-recipients of LWDAs, 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, EWB and service providers 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.

REFERENCES:

Note: References from WIOA are from the Act, as signed into law in July 2014. References from Title 20 of the Code of Federal Regulations (CFR) are cited from the Notice of Proposed Rulemaking, and are therefore subject to change pending issuance of final Federal Regulations. WIOA Section 181 (c)

- Title 20 CFR Part 683.600
- Title 29 CFR Part 37

DEFINITIONS:

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

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

Days means consecutive calendar days, including weekends and holidays.

Grievance or complaint means a written expression by a party alleging a violation of WIOA, regulations promulgated under WIOA, recipient grants, sub agreements, or other specific agreements under WIOA. All complaints, amendments, and withdrawals shall be in writing. This policy is intended to resolve matters which concern actions arising in connection with the WIOA Title I grant program.

Hearing Officer means an impartial party who shall preside at a hearing on a grievance or complaint.

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

Local Workforce Development Area includes the Workforce Development Board of Madera County's administrative entity and any sub recipients to which the administrative entity has delegated the complaint and grievance resolution process.

Participant means 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 means either a hard copy or an electronic file.

Recipient means an entity to which a WIOA grant is awarded directly from DOL to carry out a program under Title I of WIOA. The State is the recipient of funds awarded under WIOA Sections 127 (b)(1)(C), 132(b)(1)(B), and 132(b)(2)(B).

State Review Panel is an entity within EDD composed of a representative of the EDD's Compliance Review Division, the Legal Office, and the Director's Office. This Panel shall review and approve or disapprove decisions and recommendations regarding grievances or complaints.

Sub recipient means an entity to which a sub grant is awarded and which is accountable to the recipient (or higher tier sub recipient) for the use of the funds provided.

POLICY AND PROCEDURES:

Policy:

It is the policy of the Eastern Workforce Development Board that:

- *The principles and procedures set forth in OOWDI #16-2017, change 1, shall be used by EWB in the development of local-level grievance and hearing procedures; and*
- *The principles and procedures set forth in OOWDI #16-2017, change 1, shall be the guide for EWB's policies regarding the treatment and handling of all grievances or complaints in connection with all WIOA Title I grant programs and activities conducted by EWB, or pursuant (directly or indirectly) to sub grants from the State.*

The Eastern Workforce Development Board (EWB) concurs with this policy and has approved the local policy and procedures contained in this document.

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 30 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 will 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 will 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 will be made to ensure that the information on the EWB 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.

EWB PROCEDURES (General Principles and Requirements)

These procedures will guide the receipt, hearing, and resolution of non-criminal grievances and complaints relating to WIOA Title I grant programs and activities that are funded with WIOA Title I grant monies provided to the EWB by the State. These procedures will be available for use by all individuals and entities, including WIOA Title I grant participants, EWB staff, service provider of EWB, and other interested parties. EWB procedures will 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 Section 683.600(c)(3)]. Additionally, EWBs service provider 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 Section 37.35.

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.

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

I. EWB GRIEVANCE AND COMPLAINT PROCEDURES

Pursuant to Title 20 CFR Sections 683.600 through 683.610, the EWB has established this procedure for resolving grievances and complaints alleging a violation of WIOA Title I, regulations, grants, or other agreements under WIOA. The following outlines the procedures for resolving issues arising in connection with WIOA Title I grant programs operated by the administrative entity for the Eastern Workforce Development Area and its service provider(s). Any participant or other interested party adversely affected by a decision or action by the local workforce development system, including decisions by One-Stop partners and services providers, has the right to file a grievance or complaint with the Local Board.

A. 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. Such information shall be modified, as needed, whenever the procedures are changed.

EWB has the responsibility to provide technical assistance to the complainants, including those grievances or complaints against the EWDA. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the Act, regulations, local rules, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring the EWB to violate rules of confidentiality.

B. Form and Filing of Grievance or Complaint

The official filing date of the grievance or complaint is the date the written grievance or complaint is received by EWB, its service providers, One-Stop partners, or sub recipients. The filing of the grievance or complaint will be considered a request for a hearing, and EWB shall issue a written decision within 60 days for the filing of the grievance or complaint.

The grievance or complaint must be in writing, signed, and dated. For resolution purposes, EWB 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, the WIOA 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 the 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. 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. The EWB shall send a copy of the grievance or complaint to the respondent.

C. Informal Resolution

The Eastern Workforce Development 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. Where a complaint alleges a violation of WIOA Title I, grant or any agreements under WIOA, the local board must assure that every grievance or complaint not resolved informally or not withdrawn is given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

When the complaint has been resolved through the informal resolution process, EWB shall attempt to contact the complainant and have him or her provide a written withdrawal of the complaint within 10 days of the receipt of the notice of resolution or impasse where a complainant decides not to proceed to an administrative hearing. EWB shall maintain copies of correspondence in the local office complaint file.

D. Notice of Hearing

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

complaint. The complainant and the respondent must be notified in writing of the hearing 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 place of the hearing before an impartial hearing officer.
- 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.

a. Conduct of Hearings

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 a 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 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.

Composition of Grievance Panel:

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

- Where feasible, the Panel may include a representative from the WIB, a One-Stop Operator, 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.
- The Executive Director 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.

E. Decision

The hearing process will be completed within 60 days from the date the appeal/request for hearing was received by EWB and will contain the following:

- i. The names of the parties involved;
- ii. A statement of the alleged violation(s) and issues related to the alleged violation;
- iii. A statement of the facts;
- iv. The hearing officer's decision and the reasons for the decision;
- v. A statement of corrective action or remedies for violations, if any, to be taken; and
- vi. Notice of the right of either party to request a review of the decision by the State Review Panel within 10 days of the receipt of the decision

G. Appeal

If a complainant does not receive a decision at the LWDA level within 60 days of the filing of the grievance or complaint, or receives an adverse decision, the complainant then has the right to file an appeal with the State.

The complainant may request a State hearing by submitting a written notice of appeal to:

II. STATE-LEVEL GRIEVANCE AND COMPLAINT PROCEDURES

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 workforce development 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.

In cases where the State has imposed either administrative or financial/monetary sanction(s) resulting from monitoring, investigations, or audits, the complainant may file an appeal with the State through the procedures established in their Audit Resolution guidance.

A. State-Level Informal Resolution and Hearing Procedures

All complaints of noncriminal violations of the requirements of the requirements of WIOA by the State, or complaints by individuals or interested parties affected by the statewide workforce development program shall be filed in writing with the Chief of CRD. All requests for State hearings shall include the same basic elements necessary for local-level hearings. These are:

- 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, the WIOA 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 the WIOA law, regulation, or contract; and
- The remedy sought by the complainant.

Upon receipt of the request for a State hearing, the Chief of CRD or his/her designee shall review the grievance or complaint and shall provide an opportunity for an informal resolution. The CRD shall notify the complainant and the respondent within 10 days of receipt of the grievance or complaint and proceed with the informal resolution process. If the State cannot resolve the grievance or complaint informally, then a hearing will be held.

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of a grievance or complaint. The complainant and the respondent shall be notified in writing of the hearing 10 days prior to the date of hearing. The hearing notice shall advise the following:

- The date, time, and place of the hearing before an impartial hearing officer.
- The pertinent sections of the WIOA or any other federal regulations involved.
- 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.

B. APPEALS OF LWDA DECISIONS OR REQUESTS FOR EDD REVIEW

1. A complainant may file a request for review with EDD if no decision has been issued at the LWDA level within the 60-day time limit or if there has been an incident of restraint, coercion or reprisal as the result of filing a grievance or complaint. A complainant may file an appeal if the LWDA has issued an adverse decision. The request for an EDD review or appeal shall be filed or postmarked (if mailed) within 10 days from the date on which the complainant received an adverse decision from LWDA or 15 days from:

- 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, or
- The date on which an instance of restraint, coercion or reprisal was alleged to have occurred as a result of filing the complaint.

2. All requests for review or appeals shall include the following:

- The full name, telephone number, and mailing address of the complainant;
- The full name, telephone number, and mailing address of the LWDA;
- A statement of the basis of the request or appeal; and
- Copies of relevant documents, such as the complaint filed at the LWDA and the local decision, if any.

3. If an evidentiary hearing was held at the LWDA level, the EDD shall request the record of the hearing from the LWDA and shall review the record without scheduling an additional hearing. If an evidentiary hearing was not held at the LWDA level, the EDD shall instruct the LWDA to hold a hearing within 30 days of receipt of the appeal or request for an EDD review. If the LWDA refuses to hold a hearing within the required timeframe, the EDD shall, within 30 days of receipt of the appeal or request for hearing, schedule an evidentiary hearing before a hearing officer. The Chief of CRD shall notify the concerned parties and the LWDA by first class mail, certified with a return receipt, of the following information at least 10 days before a scheduled hearing:

- The date of the notice, name of the complainant, and the name of the party against whom the complaint is filed.
- The date, time, and place of the hearing before a hearing officer.
- A statement of the alleged violations. This statement shall accurately reflect the content of the complaint as submitted by the complainant.
 - The name, address, and telephone number of the contact person issuing the notice.

A. HEARING

1. The EDD hearing shall be conducted in an informal manner with strict rules of evidence not

being applicable. Both parties shall have the right to present written and/or oral testimony under oath 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. The hearing shall be recorded electronically or by a court reporter.

2. The EDD hearing office shall follow the procedures set forth in Title 22, California Code of Regulations Section 5050(a) and (b), 5053, 5054, 5055, 5056(a), (c), and (d), 5057, 5058, 5059, 5061, 5062, 5063, 5064, and 5070, except that references to the “administrative law judge” or “ALJ” shall mean “hearing officer.”

B. EDD STATE REVIEW PANEL

1. 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 issues related to the alleged violation;
 - A statement of the facts;
 - The EDD hearing officer’s decision and the reasons for the decision; and
 - A statement of the corrective action, if any, to be taken.
2. The State Review Panel shall not conduct a new evidentiary hearing, but shall review the record established by either the LWDA 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 LWDA, and shall issue a written decision to the concerned parties within 60 days of receipt by the EDD of the request for hearing or review.
3. The State Review Panel shall mail 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 issues related to the alleged violation;
 - A statement of the facts;
 - The State Review Panel’s decision and the reasons for the decision;
 - A statement of the corrective action, if any, to be taken; and
 - A notice of the right of either party to file an appeal to the Secretary of Labor.

C. REFERRAL OF LOCAL GRIEVANCES OR COMPLAINTS

Grievances or complaints filed directly with the State related to the local WIOA programs will be remanded to the Local Workforce Development Area grievance process in accordance with LWDA Grievance and Complaint Procedures.

D. REMEDIES

1. Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to:
 - 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, where applicable, of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
 - Where appropriate, to other equitable relief.
2. Nothing in paragraph 1 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.

E. FEDERAL-LEVEL APPEAL PROCESS

Under Title 20 CFR Section 683.610(a)(1), if the State or Local Workforce Development Area has not issued a decision within the required 60-day time limit, the complainant can file an appeal to the Secretary of Labor. The appeal must be filed with the Secretary of Labor no later than 120 days of the filing of the grievance or complaint with the State, or the filing of the appeal of a local grievance or complaint with the State.

In cases where a decision has been reached and the State issued an adverse decision, the complainant can file an appeal to the Secretary of Labor within 60 days of the receipt of the decision being appealed. The request for appeal must be submitted by certified mail, return receipt to:

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

A copy of the appeal must be simultaneously provided to the

ETA Regional Administrator-Region 6,
U.S. Department of Labor, Office of Regional Administrator,
P.O. Box 193767,
San Francisco, CA 94119-3767

And the opposing party.

ACTION:

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

INQUIRIES:

Please direct inquiries about this directive to the EWB EO/Complaint Officer at:

Eastern Workforce Development Board
215 State Street, Suite 400
P.O. Box 2698
Muskogee, Ok 74401
Phone: 918.685.8553