

**Nevada Department of Employment, Training and Rehabilitation
(DETR)
Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)**

Policy Number: 4.4

Originating Office: DETR; Workforce Investment Support Services (WISS)

Subject: WIOA Non-Criminal Grievance/Complaint and Appeals Process

Issued: NEW; replacing WIA State Compliance Policy 4.4, Approved GWDB Executive Committee, 3-15-17; Ratified GWDB, 04-20-17

Purpose: To provide the WIOA requirements for State, local areas and direct recipients of program funds in establishing and maintaining Grievance/Complaint and Hearing/Appeal procedures for use with program related complaints.

State Imposed Requirements: This directive may contain some state-imposed requirements. These requirements are printed in ***bold, italic type***.

Authorities/References: Workforce Innovation and Opportunity Act (P.L. 113-128); 20 CFR §683; 29 CFR§38.

ACTION REQUIRED: Upon issuance bring this guidance to the attention of all WIOA service providers, Local Workforce Development Boards (LWDB) members and any other concerned parties. Any LWDBs policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background:

WIOA requires State, LWDB and direct recipients of program funding to establish and maintain grievance/complaint and hearing/appeals procedures for handling program related complaints.

This policy establishes the procedure which an individual, or entity, may use should they determine that the non-criminal grievance or complaint process did not yield satisfactory results for the prompt and equitable resolution of complaints or that is dissatisfied with the decision of the complaint process. Though this procedure lists the formal process of resolution, the State encourages informal resolution at all levels consistent with the philosophy of WIOA. If informal resolution is not possible, the complainant must be notified in writing of the next formal procedural step in the grievance process.

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

Policy and Procedure:

A grievance or complaint is any written and signed communication by an interested party, comprising of the date, full name, telephone number, and mailing address of the complainant. It shall include the basis upon which the review is sought and include the desired resolution. The written request, electronically or in hard copy, should include account(s) of the allegation(s) to include clear and concise statement(s) of fact, dates and supporting documentation as appropriate.

An appeal is any written, dated and signed communication by an interested party expressing their intent to appeal any action or inaction with respect to a grievance or complaint to a higher level.

All parties will make reasonable efforts to assure that the information will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts will comply with the language requirements specified in 29 CFR §38 regarding provisions of services and information in languages other than English.

NOTE: The provisions of this policy do not apply to Criminal/Incident Reporting, Equal Opportunity Provisions, Employment, Accessibility or Discrimination provisions for individuals with disabilities brought under WIOA Sec. 188 or 29 CFR §38. Please refer to SCP Section 4 for specific policies.

(20 CFR §683.600)

(a) Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at §686.960 and §686.965 of this chapter.

(b) Each local area, State, and direct recipient must:

- (1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;
- (2) Require that every entity to which it awards title I funds provide the information referred to in paragraph (b)(1) of this section to participants receiving title I-funded services from such entities; and
- (3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR §37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

- (1) 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;
- (2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;
- (3) 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; and

- (4) An opportunity for a local level appeal to a State entity when:
- (i) No decision is reached within 60 days; or
 - (ii) Either party is dissatisfied with the local hearing decision.
- (d) State procedures must provide:
- (1) A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide Workforce Investment programs;
 - (2) A process for resolving appeals made under paragraph (c)(4) of this section;
 - (3) A process for remanding grievances and complaints related to the local Workforce Innovation and Opportunity Act programs to the local area grievance process; and
 - (4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and
 - (5) An opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).
- (e) Procedures of direct recipients must provide:
- (1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Innovation and Opportunity Act programs; and
 - (2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.
- (f) The remedies that may be imposed under local, State, and direct recipient grievance procedures are enumerated at WIOA sec. 181(c)(3).
- (g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part §38. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.
- (2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA sec. 188 may be directed or mailed to the (Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue NW., Washington, DC 20210), for processing.
- (h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law.

Time limitations

Complaints under this section shall be filed within 180 days of the alleged occurrence.

Time Computation, Filing and Receipt

For the purposes of these procedures, any complaint, appeal, application, request, notice, objection, petition, report or other information considered received and filed timely:

- If transmitted via United States Postal Service (USPS) on the date it is mailed as shown by the post mark, or in the absence of postmark the postage meter mark, on the envelope in which it is received; or
- If not postmarked or postage meter marked, or if the mail is illegible on the date entered on the documents as the date of completion.
- If transmitted by any means other than the USPS on the date it is actually received.

NOTE: If a delay in filing is due to an error or misinformation by the organization or person with whom the complaint or appeal is filed, the time limitation shall be adjusted in a manner equitable to the complainant.

Grievance/Complaint Resolution Procedure at the Employer Level (WEX, OJT etc.)

1. State grantees, and other sub recipients shall ensure that other employers, including private for-profit employers of participants under the Act, also have a grievance procedure relating to the terms and conditions of employment available to their participants;
2. Employers may operate their own grievance system or may utilize the system established by the State or grant recipient. Employers must inform participants when they begin employment which procedure they are to follow.
3. An employer system shall provide for, upon request by the complainant, a review of an Employer's decision by the grant recipient and the State, if necessary.
4. If the employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then those procedures should be followed for the handling of WIOA complaints under this section.

Grievance/Complaint Resolution Procedure at the State Level

1. A complaint is filed directly with the State Workforce Agency (SWA) when it is inappropriate to file the complaint with the grantee or if the complainant is a State employee.
An impartial representative of DETR will handle complaints at the State level.

Decisions:

The grantee is required to issue a written decision not later than sixty (60) days after the filing of the grievance. The decision must be delivered by certified mail, return receipt requested, to both complainant and respondent and include the following:

Case grievance/complaint, names of complainant and respondent.

1. Statement of alleged violations.
2. Decision and reason(s) for decision.
3. Statement of corrective action, if any, to be taken.
4. Notice of the right to request a review by the GWDB. This request must be made within 10 (ten) days of receipt of the adverse decision.

Rules of the GWDB Hearing of Complaint

- Grantee shall notify the complainant and the respondent as applicable of the GWDB hearing not less than 10 days prior to the date of the hearing by certified mail (return receipt requested).
- The strict rules of evidence will be waived since the hearing shall be conducted in an informal manner by both parties in order to obtain full disclosure of all the facts.
- The presentation of both written and oral testimony will be allowed.
- If either the complainant or the respondent fails to appear at the hearing, the GWDB shall render a decision based on the review of all available information.
- Any other rules the GWDB may determine appropriate.

Resolving Appeals

Any party who has filed a grievance at any level may appeal to the higher level when no decision is reached within 60 days or either party is dissatisfied with the decision. See Order of Grievance Chart later in this document.

- The appeal must be in writing and include the information required in the original complaint, including any issued resolutions and filed within ten days of the receipt of an adverse decision; or
- The appeal must be filed after the tenth day following the decision is null and void.

Review By The Secretary of Labor

The Secretary investigates allegations arising through the grievance procedures described in 20 CFR §683.600. Should the GWDB fail to provide a decision, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or its regulations have been violated; or a complaint alleging WIOA labor standards violations may be submitted to the Secretary by either party to the complaint when the complainant has exhausted the grievance procedure at the grantee or state level or no decision was made within the 60-day time period. The request shall be filed within 120 days from the date on which the complainant should have received a decision or within 60 days if a decision has been reached but the party to which such a decision is adverse. The grievance/complaint should contain the following;

1. The full name, telephone number, if any, and address of the person making the grievance/complaint.
2. The full name and address of the respondent against whom the grievance/complaint is made.
3. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;
4. The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;
5. A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded, before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case;
6. A statement of the date the grievance/complaint was filed with the Governor's Workforce Development Board (GWDB), the date on which the GWDB should have issued a decision, and an attestation that no decision was issued;
7. A request will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and grant recipient.

NOTE: Reference 20 CFR §683.610 below for mailing/copy instructions.

(WIOA Sec. 181(c)(1-3))

(c) GRIEVANCE PROCEDURE.—

- (1) IN GENERAL.—Each State and local area receiving an allotment or allocation under this title shall establish and maintain a procedure for grievances or complaints alleging violations of the requirements of this title from participants and other interested or

affected parties. Such procedure shall include an opportunity for a hearing and be completed within 60 days after the filing of the grievance or complaint.

(2) INVESTIGATION.—

(A) IN GENERAL.—The Secretary shall investigate an allegation of a violation described in paragraph (1) if—

- (i) a decision relating to such violation has not been reached within 60 days after the date of the filing of the grievance or complaint and either party appeals to the Secretary; or
- (ii) a decision relating to such violation has been reached within such 60 days and the party to which such decision is adverse appeals such decision to the Secretary.

(B) ADDITIONAL REQUIREMENT.—The Secretary shall make a final determination relating to an appeal made under subparagraph (A) no later than 120 days after receiving such appeal.

(3) REMEDIES.—Remedies that may be imposed under this section for a violation of any requirement of this title shall be limited—

- (A) to suspension or termination of payments under this title;
- (B) to prohibition of placement of a participant with an employer that has violated any requirement under this title;
- (C) where applicable, to reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
- (D) where appropriate, to other equitable relief.

(20 CFR §683.610)

(a) The Secretary investigates allegations arising through the grievance procedures described in § 683.600 when:

- (1) A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or
- (2) A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

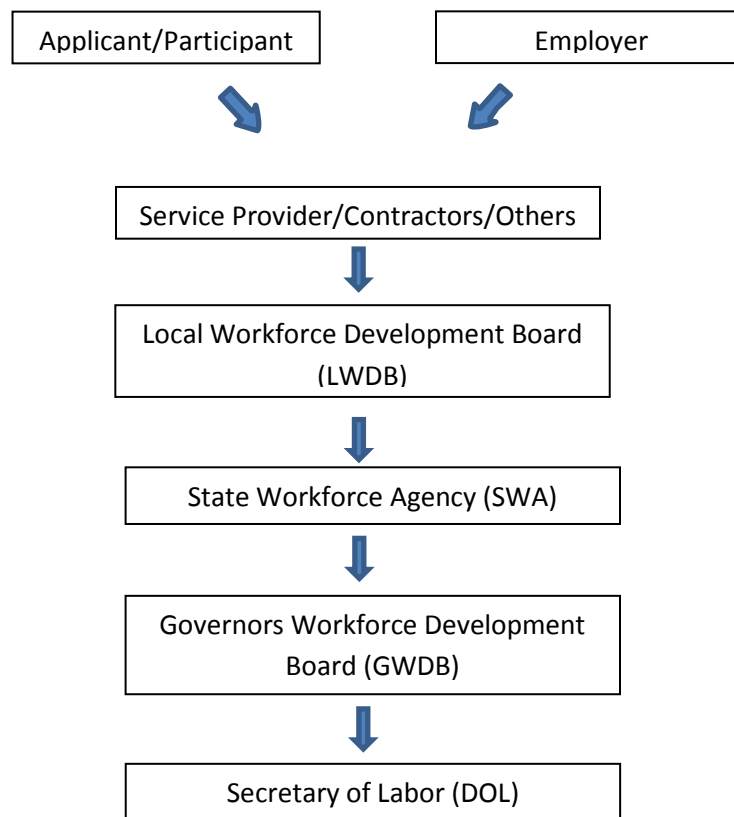
(d) Except for complaints arising under WIOA sec. 184(f) or sec. 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that the Department of Labor will investigate the grievance under the procedures at § 683.430. Discrimination

complaints brought under WIOA sec. 184(f) or sec. 188 or 29 CFR part 38 will be referred to the Director of the Civil Rights Center.

(e) Complaints and grievances from participants receiving services under the Wagner-Peyser Act will follow the procedures outlined at part 658 of this chapter.

NOTE: In instances when a grievance or complaint is submitted directly to the state, but could be heard by the LWDB without compromising the opportunity for a fair hearing, the State may remand the matter to the LWDB for hearing under the grievance process. Nothing shall preclude a complainant's rights to appeal to the State or GWDB as detailed in this policy.

Order Of Grievance/Complaints/Appeals Chart



General Provisions Summary (20 CFR §683.600)

- Any interested person has a right to file a grievance or complaint.
- Any complaint relating to a term or condition of employment shall be filed under the employer's established grievance procedures.
- ***All other complaints shall be initiated at the recipient level. Any action pursuant to the original decision is stayed until a final decision is made by the appeals process.***

- ***Upon receipt of the written grievance/complaint the LWDB shall, within seven (7) days, forward to the State and the respondent a copy of the written grievance.***
- The freedom to file a complaint or appeal may not be limited or interfered with in any way.
- Representation of interested parties in connection with complaints or appeals may not be limited or interfered in any way.
- ***A complainant has the right to withdraw their grievance/complaint in writing at any time prior to the formal hearing.***
- ***Grievances/complaints can be amended to clarify issues, but not add new allegations.***
- ***Any absence of the required information shall not constitute grounds for dismissal of the grievance/complaint and will be addressed at the appropriate level.***
- All employees and participants either in employment or training shall be provided with a written description of these procedures, notification of their right to file a grievance/complaint and the process of how to do so; the participant shall be notified if local laws, agreements or personnel rules allow for additional procedures to file a grievance/complaint.
- ***Complainants must exhaust the procedures at the grant recipient level before the grievance/complaint may be filed with the State. The only exceptions will be when the GWDB has determined that:***
 1. ***The grant recipient did not act within the specified time frame.***
 2. ***The grant recipient was not in compliance with either their own procedures or the State's.***

LWDB Policy Requirements Summary

- LWDB must have written policies to address handling of informal and formal (written) grievances / complaints and appeals. Policies must contain procedures for the investigative process, documentation of the investigation including the resolution and record retention requirements as required in 20 CFR §683.600, and in alignment with that of the State policy. LWDB policy must including the procedure and time frames for notifying the State of outcomes from the complaint investigation.
- LWDB must ensure all sub recipients of WIOA funding have sufficient written policies. These must include providing information about the content of the policy to participant receiving WIOA Title I services and include record retention requirements as described in 20 CFR §683.600 and in alignment with that of the LWDB and State policy or adopt those of the LWDB.