



COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF SOCIAL SERVICES
WORKFORCE DEVELOPMENT BOARD

3433 South Higuera Street, P.O. Box 8119, San Luis Obispo, CA 93403-8119
(P) 1-805-781-1908

POLICY NO: 31-19
TO: Service Providers
FROM: Department of Social Services
EFFECTIVE: January 01, 2020
SUBJECT: WIOA Title I Grievance and Complaint Procedures

REFERENCES:

- Workforce Innovation and Opportunity Act (WIOA), Section 181(c)
- Title 20 Code of Federal Regulations (CFR), 683.600 & 683.700
- Title 29 Code of Federal Regulations (CFR), Section 37.35
- Workforce Services Directive (WSD) 18-05

PURPOSE:

The purpose of this directive is to provide guidance to the County of San Luis Obispo Workforce Innovation and Opportunity Act (WIOA) Title I participants, subrecipients, staff, and service providers in the development, maintenance and implementation of grievance and complaint procedures. This policy covers procedures pertaining to complaints alleging noncriminal violations of the requirements of the WIOA in operating WIOA activities.

BACKGROUND:

Title 20 CFR Section 683.600 requires each Local Workforce Development Area (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 America's Job Center of California (AJCC) one-stop system partners, service providers and the Statewide workforce development programs.

POLICY:

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 38. Refer to local policy 30-19 addressing Nondiscrimination and Equal Opportunity Procedures regarding these matters.

Information and complaints involving allegations of fraud, abuse or other criminal activity must be reported directly to the Department of Labor's (DOL) Office of Inspector General and the Employment Development Department's (EDD) Compliance Review Division (CRD) through the procedures for reporting incidents described in local Incident Reporting policy 34-19.

It is the policy of the County of San Luis Obispo Department of Social Services (as the Administrative Entity for the Workforce Development Board (WDB)/WIOA programs) that:

- The principles and procedures set forth in this policy shall be used by all staff, subrecipients and service providers of WIOA in the development of local-level grievance and hearing procedures; and
- The principles and procedures set forth in this policy shall govern the treatment and handling of all grievances or complaints relating to any WIOA funded programs and activities implemented in San Luis Obispo County.

No individual will be discharged, intimidated, threatened, coerced, or discriminated because of filing a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the grievance and complaint provisions of the WIOA.

DEFINITIONS:

Complainant means any participant or other personally interested or personally affected party alleging a noncriminal 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 information.

Days mean 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 Title I grant programs. All complaints, amendments, and withdrawals shall be in writing.

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

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.

Respondent is the person and/or agency that the complaint has been filed against.

State Review Panel is an entity with EDD comprised 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 recommendation regarding grievances or complaints.

PROCEDURES:

These procedures will guide the receipt, hearing, and resolution of noncriminal grievances and complaints relating to WIOA Title I programs and activities that are funded with WIOA Title I grant monies provided to the State by DOL. These procedures are available for use by all individuals and entities; including WIOA Title I participants, WIOA Title I staff, subrecipients, service providers and other interested parties.

At all levels of the grievance and 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.

WIOA Title I Service Provider Requirements:

- All WIOA service providers shall have the duty and responsibility to ensure that the WIOA program follows the provisions of the WIOA complaint resolution procedure and shall work cooperatively with the Department of Social Services (DSS) to process all complaints filed with their agency involving WIOA Title I-funded activities.
- WIOA service providers shall identify a Grievance and Complaint Officer that will facilitate the grievance and complaint process in accordance with WIOA and provisions outlined in this policy.
- All complaints received by WIOA service providers must be reported to **DSS within 24-hours** of receipt of the complaint.
- Initial and continuing notice of 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.
- At orientation, each participant in any WIOA Title I program will be provided a copy of the *Participant Notice of WIOA Program Grievance/Complaint Procedures* (Attachment 1). Each participant will sign the Notice and will be provided a copy of their signed Notice. Original copy of the signed Notice shall be maintained in the participant's file.
- When a participant requires a reasonable accommodation due to a disability of limited English proficiency, they are to be provided the Complaint Procedure Notice in a format they understand. Such efforts must comply with language requirement of Title 29 CFR Section 37.35.
- WIOA service provider staff and WIOA Administrative Entity/WDB staff have the responsibility to provide technical assistance to the complainants. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as WIOA regulations, local policies, etc., and providing clarifications and interpretations of relevant provisions.

Grievance and Complaint Process:

A. Filing of Grievance or Complaint

The official filing date of the grievance or complaint is the date the written grievance or complaint is received. A written decision shall be issued **within 60 days** of the filing of the grievance or complaint.

The grievance or complaint must be in writing, signed and dated. For resolution purposes, the complaint must contain the following information:

- The full name, mailing address and telephone number of the complainant;
- The full name, telephone number and address of the respondent, if known/applicable;
- A clear and concise statement of the facts and dates describing the alleged violation
- If known, the provisions of the WIOA law, regulations, policy or other agreements under WIOA believed to have been violated;
- 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.

The attached Grievance and Complaint form (Attachment 2) may be used to assist individuals with filing a written complaint.

Complaints may be amended to correct technical deficiencies up to the time of the hearing, however may not be amended to include new issues. The one-year period in which a grievance or complaint may be filed is not extended for grievances or complaints that are refiled with amendments. Complaints may be withdrawn at any time prior to the issuance of the written decision. All complaints, amendments, and withdrawals must be in writing.

It is the policy of DSS that grievances or complaints under WIOA should be resolved at the lowest level possible. Therefore, complaints under WIOA must first be filed with the designated Officer at the service provider level.

The WIOA service provider must notify DSS **within 24 hours of the receipt of a WIOA complaint**. The notification should be sent to:

County of San Luis Obispo
Department of Social Services
Workforce Development Board
Attn: WIOA Program Manager
3433 S. Higuera St.
PO Box 8119
San Luis Obispo, CA 93403-8119

Telephone Number: (805) 781-1838
Fax Number: (805) 781-1846
TTY: (800) 735-2922 (English)
or (800) 855-3000 (Spanish)

DSS reserves the right to intervene in the processing of any WIOA complaint at the informal resolution stage to assist in resolution, clarify the issues, provide technical assistance, conduct the informal resolution meeting or schedule a hearing before an impartial hearing officer to ensure due process and compliance with the **60-day time limit required for resolution pursuant to WIOA regulations**.

B. Informal Resolution

The service provider Grievance and Complaint Officer facilitating the complaint process must make good faith efforts to resolve all grievance and complaints prior to a scheduled hearing. Where a complaint alleges a violation of WIOA Title I or any agreements under WIOA, service providers must ensure 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.

The informal resolution process can be held in person or via telephone and shall include the following:

- Initial Contact – information gathering interview between the Officer responding to the complaint and the complainant.
- Investigation – the Officer will notify the person and/or agency that the complaint has been filed against (respondent), gather information from case files and other appropriate sources, and interview those parties involved.
- Determination – Based on the results of the investigation, the Officer will review the case with DSS Program Manager to formalize a final decision.
- Resolution – the Officer will review the resolution with the person/agency the complaint was filed against, and with the complainant. The resolution will be documented in a letter signed by the Officer and mailed to the complainant and respondent **within 10 days** from the date the complaint was filed. The resolution letter must include:
 - A summary of the issues addressed
 - Date(s) of the informal resolution meeting/conversation(s)
 - Attendees of the meeting (if an in-person meeting occurred)
 - Terms of the agreement which has been reached by the parties as full and complete resolution of the complaint.

When an agreement is reached through the informal resolution process, the complainant shall be requested to provide a written withdrawal of the complaint filed within 10-days of the receipt of the resolution and sign the resolution letter which outlines the complete resolution of the complaint. If the informal resolution process 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 an impasse, the complainant shall be requested to provide a written withdrawal of the complaint within 10 days of receipt of the notice of impasse.

All documents and notes become part of the complaint file, which must be retained for a minimum of three years from the close of the program year that the complaint was filed in.

If the complainant or the respondent is not satisfied with the resolution, they can request a hearing **within 10 days** of issuance of the decision letter. Hearing requests can be made to the service provider's Grievance/Complaint Officer staff indicated on the Participant Notice of WIOA Program Grievance/Complaint Procedures form (Attachment 1) or to the DSS WIOA Program Manager at 805-781-1838.

C. Notice of Hearing

Hearings on any grievance or complaint shall be conducted with DSS **within 30 days** of receipt 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 who the grievance or complaint is filed.
- The date, time, and place of the hearing.
- A statement of the alleged violations. The statements must accurately reflect the content of the grievance or complaint submitted by the complainant. However, clarifying notes may be added to ensure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

Requests to reschedule a hearing may be made in writing and for good cause. Requests must be made at least **72 hours** prior to the scheduled hearing. DSS will make the final decision on such requests subject to acceptance of all parties of an extension (if applicable) of the 30-day requirement on scheduling a hearing, and the re-scheduling must not extend the 60-day requirement of WIOA to have a final decision.

D. Conduct of Hearings

An impartial hearing officer (appointed by DSS) shall conduct the hearing with the complainant, respondent, and appropriate other parties. The hearing must be held within **30 days** from the receipt of the complaint. The hearing will be conducted in an informal manner 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 in support of their position; the right to examine records and documents relevant to the issues; and the right to be represented. The hearing will be recorded electronically. The hearing officer will request all documents from the informal resolution process (if applicable). The complainant will present their case first. After the complainant has concluded the presentation of its case, the respondent shall present its case. After the respondent has concluded the presentation of its case, the complainant shall be given an opportunity to respond to any evidence presented by the respondent. After the presentation of evidence, each party shall have the opportunity to make a closing statement. To ensure all relevant and material evidence has been presented, the hearing officer may question any party's witness.

E. Decision

No later than **60 days** from the receipt of the written grievance or complaint, DSS will notify the complainant and respondent in writing of the final determination of DSS. The written decision will contain the following information:

- The names of the parties involved;

- A statement of the alleged violation(s) and the issues related to the alleged violations;
- A statement of the facts;
- The hearing officer's decision and the reasons for the decision;
- DSS Director's review of the hearing officer's recommendation(s) and the final Determination at the LWIOA level;
- A statement of corrective action or remedies for violations, if any, to be taken; and
- Notice of the right of either party to request a review of the decision by the State Review Panel (SRP) **within 10 days** of the receipt of the decision.

F. Appeal

If a complainant receives an adverse decision, the complainant then has the right to file an appeal with the State. The request must be submitted **within 10 days** from the date on which the complainant received the written resolution decision from Local Workforce Development Area (LWDA) (i.e. DSS or the WIOA Service Provider).

If a complainant does not receive a decision from the LWDA **within 60 days** of the receipt of the grievance or complaint, or if there has been any incident(s) of restraint, coercion, or reprisal as a result of filing a grievance or complaint, the complainant may file a request for EDD review 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.

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

Chief, Compliance Review Division, MIC 22-M
 Employment Development Department
 PO Box 826880
 Sacramento, CA 94280-0001

The written request should contain the following information:

- Full name, telephone number and mailing address of the complainant;
- Full name, telephone number and mailing address of the respondent;
- Full name, telephone number and mailing address of the LWDA
- A statement of the basis for the appeal/request for hearing;
- Copies of relevant documentation, such as the complaint filed with the local WIOA Service provider/DSS and their final determination;
- A statement of the remedy sought by the complainant.

If a hearing was held by the LWDA, the State shall request the record of the hearing and review the record, without scheduling an additional hearing. The LWDA is to provide written transcripts of any audio or visual recordings of the hearings via overnight mail. If a hearing was not held by the LWDA, the State will instruct the LWDA to schedule a hearing **within 30 days** of receipt of the appeal. If the LWDA does not schedule a hearing within the time frame

specified, the State will schedule a hearing with a hearing officer. If a State hearing is conducted, it will be conducted as outlined in Employment Development Department Workforce Services Directive (WSD) 18-5.

The Chief or Compliance Review Division (CRD) will notify the concerned parties and DSS, by Certified Mail the following information at least 10 days prior to the 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 allegations – 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

Following the completion of the State hearing, the State hearing officer shall make a written recommendation to the SRP. The SRP shall not conduct a new hearing, but shall review the record established by either the LWDA or the State hearing. The SRP shall issue a decision based on the information contained in the record. The SRP may accept, reject, or modify the State hearing officer's recommendation for the decision of the LWDA and shall issue a written decision to the concerned parties within 60 days of the receipt by the State of the request for appeal/hearing.

If the State issued an adverse decision, the complainant can file an appeal to the United States Secretary of Labor. Appeals of an adverse decision must be filed within 60 days of receipt of the adverse decision from the State Review Panel. In cases 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.

The request for appeal must be submitted by certified mail, return receipt to:

Attention: Assistant Secretary of ETA
US Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

