

## **Workforce Innovation and Opportunity Act (WIOA) Section 181 (c) (1) Complaint/Grievance and Appeal Process**

The following procedures should be used by DET, DET grantees, employees and applicants for or participants in DET funded programs to resolve complaints/grievances and appeals involving alleged violations of the WIOA program, grants and related regulations, applicable to the Department of Labor (DOL), DWD – DET, local Workforce Development Board Wisconsin and entities extended WIOA funds as required under Sections 181(c) (1) and Section 188 of WIOA.

### **Who is Covered By The Grievance/ Complaint and Appeal Procedures?**

The procedures apply to all program applicants, applicants for employment, participants and employees of any WIOA Title-I funded entity and other interested parties effected by the local Workforce Development System (WDS).

### **Complaints/Grievances and Appeals Processes**

#### **1. General Requirements for Processing Complaints/Grievances and Appeals.**

- a) Local Program and Local Grant Recipient's Responsibilities.

DET grantees (Workforce Development Boards and their sub-recipients) are required to establish and maintain a local complaint/grievance and appeal procedures that conform to DWD – DET WIOA grant and other applicable federal and state requirements.

All local grantee grievances and complaints procedures must provide for due process.

#### **(1) The elements of due process must provide:**

- a) Notice to the parties of the specific charges and the responses of those involved;
- b) Reasonable timing;
- c) An impartial decision-maker;
- d) The right of the parties to representation;
- e) The right of each party to present evidence both in writing and through witnesses;
- f) The right of each party to question others who present evidence; and
- g) A decision made strictly on the recorded evidence.

#### **(2) Local Workforce Development Board and Sub-recipient Grantees must:**

- a) Describe their grievance/complaint and appeal procedures in their DWD grant agreements.
- b) Assure that their sub-grantees are informed of and maintain procedures consistent with the requirements of this section.
- c) Require that every employer who hires participants under DET-funded programs shall maintain complaint/grievance and appeal procedures which include the employer's terms and conditions of employment as described in WIA Title I Section 122 (h)(1) [and applicable collective bargaining agreements.]
- d) Follow their own written procedures in resolving WIA Title I complaints/grievances at the local level.
- e) Allow for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

- f) Post grievance/complaint and appeal procedures in prominent locations. Ensure that DWD grant participants are notified of their rights to file a grievances/complaints, and how to request a hearing or appeal.
- g) Describe the process for 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.
- h) Provide the grievance/complaint and appeal procedures notices in other languages other than English to Limited English Proficiency (LEP) language groups meeting "Safe Harbor" threshold triggering the obligation to translate vital documents and information.
- i) Describe the process for the grievant/complainant to appeal a decision to the DWD – DET and or DOL level within 60 days after an adverse decision has been made or if no decision is issued to the grievant/complainant within 60 days.
- j) Retain all records about complaints/grievances and appeals for a period of three years or beyond three years if the complaints/grievances and appeals are not resolved or are under audit, investigation or litigation.

### **What Type of Grievances or Complaints can be filed?**

Any alleged violation of Title-I WIOA program involving regulations, policies, and procedures of the local Workforce Development System (WDS) and entity funded with WIOA funds.

### **Local Grievance and Complaint Processing Timeline**

All grievances/complaints must file a writing within one year after the alleged violation took place.

The local funded entity and WDB must provide the grievant/complainant the opportunity for an informal resolution, schedule a hearing within 30 days if needed and issue a decision within 60 days from the date the grievance/complaint was filed.

Decisions issued that are adverse to the complainant/grievant or in the case a decision is not issued within 60 days, the complainant/grievant may file an appeal for a state level independent review by DWD – DET. Complainant/grievant must file the appeal with DWD - DET within 10 calendar days after the complainant/grievant received the decision; or in the case where a decision is not issued, the appeal may be file within 15 calendar days after the decision was due.

Appeals filed with the DET Administrator requesting for a State independent review will be issued a final decision within 30 calendar days after the appeal was filed.

Complaint appeals alleging that the DET Administrator, on behalf of the Governor, has not issued a decision within 60 days after a complaint is filed or the party to such decision receives an adverse decision may appeal these issues to the Secretary of Labor. The Secretary shall make a final determination no later than 120 days after receiving such an appeal.

### **Final Authority on Decisions**

The DET administrator, on behalf of the Governor, has the final decision-making authority on complaints/grievances arising from administration, implementation and operation of DWD grants.

### **DWD - DET as A Respondent**

When DET is a respondent to a grievance/complaint about the administration, implementation and operation of its DET-funded employment and training programs, the following procedures will apply:

1. The complainant must file a written complaint/grievance within one year after the alleged violation took place. For a complaint or grievance involving audit resolution, an appeal must be filed between 15 and 30 days after the issuance of the determination letter, as detailed in the letter.
2. DET must review the complaint/grievance to determine if it was filed within the one-year time limit and if it falls within DET's jurisdiction. If the criteria are not met, DET shall provide the complainant with written notice of the rejection of the complaint/grievance and the reasons for that rejection. If the criteria are met, DET shall provide the complainant with written notice of the acceptance of the complaint/grievance.
3. After accepting the complaint/grievance, DET shall:
  - a. Appoint a hearing examiner;
  - b. Conduct a hearing within 30 calendar days of the filing date; and
  - c. Issue a decision to the complainant within 60 calendar days of the filing date.
4. After receiving an adverse decision or no decision on a complaint/grievance within 60 calendar days, the complainant may file an appeal requesting a state level independent review. This appeal must be filed with DET
  - a. The complainant must file the appeal within 10 calendar days after the complainant received the decision; or
  - b. If the complainant did not receive a decision, the complainant must file the appeal within 15 calendar days after the decision was due.
5. After accepting the appeal, DET shall designate a review officer to conduct the state level independent review.
6. After reviewing the case file and (if needed) gathering additional information, the Independent Review Officer shall issue a recommended decision to the DET Administrator within 30 calendar days after the appeal was filed. The DET Administrator may accept, reject or modify the Independent Review Officer's recommended decision.
7. The DET Administrator must, on behalf of the Governor, issue a final decision within 30 calendar days after accepting the request for a state level independent review.

### **DOL Processes For Reviewing Local Grievance Complaints of Title I Recipients**

The DOL Secretary will investigate allegations arising from and appeal filed from the local and/or State level in the following circumstances:

1. An appeal may be filed in cases where a decision was not 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 has been reached but the party to which such decision issued is adverse and appeals to the Secretary.

The Secretary must make a final decision on an appeal under paragraph (2) of this section no later than 120 days after receiving the appeal.

Appeals made under paragraph (2) above must be filed within 60 days of the receipt of the decision being appealed.

Appeals made under paragraph (1) above must be filed within 120 days of the filing of the grievance with the local WDB or local grant recipient, and/or the filing of the appeal of the local grievance with the State.

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.

Complaints and grievances made directly to the Secretary alleging claims of discrimination may be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that DOL will investigate the grievance through the Director of the Civil Rights Center. Complaints and grievances from participants receiving services under the Wagner-Peyser Act (labor exchange services) will follow the procedures follow the procedures outline in the One-Stop-Center (OSC) Job Center Complainant Coordinator System (JCCCS).

### **Forms for Filing Complaints/Grievances**

The DWD - DET Complaint Information Form [DETS-7627](#) must be used for all formal complaints/grievances filed with DET. Local agencies may modify the form for their own use as long as they comply with basic complaint/grievance filing requirements.

### **Technical Assistance**

At the State level, DET shall provide technical assistance to grantees or other parties needing information on complaint/grievance procedures and related issues.

At the local Workforce Development Board (WDB) or local grant recipient level, the designated WDB complaint/grievance or local grant recipient complaint/grievance person must be identified in the WDB and/or local grant recipient complaint policies and procedures for applicants/participants and other interested parties to contact when requesting technical assistance.

### **What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?**

(a) Non-designation of local areas:

- (1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State WDB for a unit of general local government (including a combination of such units) or grant recipient that subsequent designation of an area as a local area under WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.
- (2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.
- (3) If the appeal to the State WDB does not result in designation, the appellant may request review by the Secretary under § 683.640.

(b) Denial or termination of eligibility as a training provider:

(1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local WDB or the designated State agency under WIOA sec. 122(b), 122(c), or 122(d).

(ii) Termination of eligibility or other action by a Local WDB or State agency under WIOA sec. 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a one-stop operator under WIOA sec. 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) Testing and sanctioning for use of controlled substances.

(1) A State must establish due process procedures, in accordance with WIOA sec. 181(f), which provide expeditious appeal for:

(i) Participants in programs under title I, subtitle B of WIOA subject to testing for use of controlled substances, imposed under a State policy established under WIOA sec. 181(f)(1); and requests, but is not granted, initial or

(ii) Participants in programs under title I, subtitle B of WIOA who are sanctioned, in accordance with WIOA sec. 181(f)(2), after testing positive for the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

**§ 683.640 What procedures apply to the appeals of non-designation of local areas?**

(a) A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for initial or subsequent designation as a local area to the State WDB has not resulted in such designation, may appeal the State WDB's denial to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State WDB, and 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 State WDB.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter, the Secretary may require that the area be designated as a local area. In making this determination, the Secretary may consider any comments submitted by the State WDB in response to the appeal made under paragraph (a) of this section.

(e) The Secretary must issue a written decision to the Governor and the appellant.

**§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?**

(a) A local area which has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIOA sec. 184(b). The appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization.

(b) The sanctions described in paragraph (a) of this section do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued the decision described in paragraph (e) of this section.

(c) A local area which has failed to meet local performance indicators for 3 consecutive program years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal to the Governor to rescind or revise such plan, in accordance with § 677.225 of this chapter.

(d) Appeals to the Secretary made under paragraph (a) of this section 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 Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. In making this determination, the Secretary may consider any comments submitted by the Governor in response to the appeals