



Monterey County Workforce Development Board (WDB)
LOCAL POLICY BULLETIN #2005-10

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Full WDB Adopted: June 1, 2016

TO: All Monterey County Workforce Innovation and Opportunity Act (WIOA) Service Providers

SUBJECT: Grievance and Complaint Procedures

PURPOSE: The purpose of this policy is to provide guidance and procedures to be used by local recipients of WIOA funds in the development of local level procedures when participants and other interested parties affected by the local workforce investment system file a complaint or grievance.

REFERENCES: WIOA Section 181(c), Title 20 Code of Federal Regulations (CFR) Part 667.600, and Title 29 CFR Part 37.

POLICY: It is the policy of the Monterey County Workforce Development Board (WDB) that:

- The principles and procedures set forth in this policy shall be used by all local recipients of WIOA funds in the development of local-level grievance and complaint procedures; and
- The principles and procedures set forth in this policy shall govern the treatment, handling and resolution of all non-criminal grievances or complaints in connection with all WIOA Title I grant programs and activities conducted in the County of Monterey, or pursuant to subcontracts from the County of Monterey. The procedures herein set forth are to be utilized by the LWDB administrative entity and contracted providers of services in processing such complaints.

DEFINITIONS:

- *Days* means consecutive calendar days, including weekends and holidays.
- *Complainant* means any client or other personally affected party alleging a non-criminal violation of the requirements of WIOA.
- *Grievance or complaint* means a written expression by a client, subcontractor, or other interested person, or their duly appointed representative, alleging a violation of WIOA, applicable statutes and regulations promulgated under the WIOA, and grant and/or contract conditions or provisions or other rules or policies. All complaints, amendments, and withdrawals shall be in writing. These procedures are 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.
- *Client or Participant* means an individual who has been determined eligible to participate in and who is receiving services under a program authorized by WIOA. Also known as "participant" or "customer".

PROCEDURES:

I. GENERAL PRINCIPLES AND REQUIREMENTS

Title 20 Code of Federal Regulations (CFR) Section 667.600 requires the Monterey County WDB under Title I of WIOA to establish and maintain a procedure for receiving and acting upon complaints from clients or other interested parties affected by the local workforce development system, including America's Job Center of California partners, providers of services and subcontractors.

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 CFR Part 37, although the attached complaint and grievance form does include a general statement regarding the Equal Employment Opportunity/Affirmative Action (EEO/AA) procedure administered by the



Monterey County Human Resources Department. 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 Office (CRO) through the WDB procedures for reporting incidents.

An individual alleging a labor standards violation may submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties so provides.

All recipients of WIOA Title I grant funds must make reasonable efforts to assure that these procedures are understandable to affected clients and individuals – including youth, and those individuals who have limited English-speaking capabilities.

Grievances or complaints must be filed within **one year** of the alleged violation. All grievances or complaints, amendments and withdrawals must be in writing. This time period is not extended for complaints that are re-filed with amendments. The official date of the complaint will be the date it is actually received.

In keeping with these general principles, the following procedure shall apply:

II. LOCAL GRIEVANCE PROCEDURES

The following grievance procedure shall be implemented for grievances arising in the Workforce Development Area:

1. Applicants, participants, Job Center partners, service providers, bidders, WIOA funded staff or others alleging violations of the Acts, regulations, sub grants, or other contracts under WIOA (other than discrimination complaints) shall utilize this Grievance Procedure in filing a complaint. In all cases above, the complaining party has the right to ask for and receive help in filing the complaint or grievance. Unsuccessful bidders may also file grievances based upon violations of local procurement requirements or procedures. These grievances should be filed with the County of Monterey Contracts/Purchasing Department. Individuals shall be informed of this right by either WDB staff or the subcontractor as appropriate.
2. Except for complaints regarding discrimination, grievances arising at the WDB, Administrative entity and/or its service providers must first exhaust available remedies and procedures at that level prior to their being brought for State review.
3. Complaints, unless otherwise specified, (except for those alleging fraud or criminal activity or discrimination) shall be filed within one year of the alleged occurrence.
4. Delegation Progress:
 - a. Complaints arising at the employer level in the On-the-Job Training (OJT) contracts regarding terms and conditions of participant's employment shall first be handled through the employer's grievance procedure. However, in the event the grievance cannot be resolved following the employer's procedures, the complainant shall be advised that they may follow this WIOA grievance procedure. Grievances pertaining to OJT contract terms should be handled by following the process described in this policy.
 - b. Complaints of any WIOA funded personnel involving the terms and conditions of employment should follow the employing agency's procedures. The procedures must be exhausted before submitting a complaint according to WIOA procedures.
 - c. Labor Standards Violations: Whenever participants have complaints alleging a labor standards violation, they may use the established local and State Grievance Procedures or choose to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides.

All other grievances of applicants, participants, Job Center partners, service providers, WIOA funded staff, and other interested persons not applicable to the above categories shall follow the procedures listed below:



1. Complaints must be made within one year of the alleged occurrence and must be in writing, signed by the complainant and include the following information:
 - a. The full name, telephone number (if any) and address of the person making the complaint.
 - b. The full name and address of the respondent against whom the complaint is made.
 - c. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.
 - d. The type of relief requested.

A request will be considered to have been filed when the reviewing authority receives from the complainant a written statement, including information specified above which contains sufficient facts and arguments to evaluate the complaint.

2. Complaints should be sent to:

Attn: WDB Executive Director
Monterey County Workforce Development Board
P.O. Box 2448
Salinas, CA 93902

The WDB shall investigate the complaints and attempt to resolve the matter informally during the 30 day period between filing and hearing of a grievance and prior to rendering of a decision.

3. Informal Resolution: The LWDA 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 a 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 LWDA 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, the LWDA 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. The LWDA shall maintain copies of correspondence in the complainant's file.

4. 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.

5. Conduct of Hearing

An impartial hearing officer shall conduct the hearing. The State suggests that LWDA's seek impartial hearing officers from among the staff of legal offices or personnel departments of municipalities or counties that will not be directly affected by, or will not implement the final resolution of, a specific grievance or complaint.

The hearing will be conducted in an informal manner with strict rules of evidence not



being applicable and according to the procedures established by the LWDA's. Both parties will 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 or by a court reporter.

6. Decision

Not later than 60 days after the filing of the grievance or complaint, the hearing officer shall mail a written decision to both parties by first class mail. The hearing officer's 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 hearing officer's decision and the reasons for the decision;
- 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 within 10 days of the receipt of the decision.

7. 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:

Chief, Compliance Review Office, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001
Phone (916) 653-3270

III. STATE-LEVEL GRIEVANCE AND COMPLAINT PROCEDURES

Title 20 CFR Section 667.600(d) requires the State to provide a process for dealing with grievances and complaints from participants or interested parties affected by the statewide workforce investment 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.

1. State-Level Informal Resolution and Hearing Procedures

All complaints of non-criminal violations of the requirements of WIOA by the State, or complaints by individuals or interested parties affected by the statewide workforce investment 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.

2. Appeals of LWDA Decisions or Requests for EDD Review

- a. 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.

b. 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.

c. 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 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.

3. Hearing

a. 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.

b. The EDD hearing officer 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."

4. EDD State Review Panel

a. 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.

b. 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.

- c. 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.

5. 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 area grievance process in accordance with LWDA Grievance and Complaint Procedures.

6. Remedies

a. 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.

b. 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.

7. Federal-Level Appeal Process

Under Title 20 CFR Section 667.610(a)(1), if the State 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 an appeal of a local grievance or complaint with the State.

In cases where a decision must be submitted by certified mail, return receipt to:

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

A copy of the appeal must be simultaneously provided to the opposing party, and:

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

INQUIRIES: For questions or assistance related to this policy, please contact the Monterey County Workforce Development Board staff at (831) 796-6434.

This policy is posted on the WDB website located at: www.montereycountywdb.org/policies/