
Grievance and Complaint Procedures

PURPOSE

The purpose of this policy is to provide guidance to Pacific Gateway Workforce Innovation Network (Pacific Gateway) staff and its subrecipients in the development, maintenance and implementation of grievance and complaint procedures. This policy covers the procedures pertaining to complaints alleging noncriminal violations of the requirements of the Workforce Innovation and Opportunity Act (WIOA) in operating WIOA activities and other programs administered and/or overseen by Pacific Gateway.

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) 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. 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 Workforce Services Directive WSD12-18.

It is the policy of Pacific Gateway that:

- The principles and procedures set forth in this policy shall be used by all staff and subrecipients of WIOA and other grant funded programs 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 in connection with all WIOA and other grant-funded programs and activities administered and/or overseen by Pacific Gateway.

A. 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 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. 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.

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. Also, known as a “customer.”

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

I. General Principals and Requirements

These procedures will guide the receipt, hearing, and resolution of noncriminal grievances and complaints relating to WIOA Title I grant programs and activities that are funded with WIOA Title I grant monies provided to the State by DOL. These procedures will be available for use by all individuals and entities; including WIOA Title I grant participants, Pacific Gateway staff and subrecipients, and other interested parties. These 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.” Additionally, Pacific Gateway and its subrecipients 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 language requirement of Title 29 CFR Section 37.35.

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. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal or discrimination.

II. Grievance and Complaint Procedures

Pursuant to Title 20 CFR Section 683.600 and Workforce Services Directive WSD08-04, these procedures have been established 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 Pacific Gateway and its subrecipients. Any participant or other interested party adversely affected by a decision or action by Pacific Gateway, including decisions by AJCC partners and service providers have the right to file a grievance or complaint with Pacific Gateway.

A. Notice to Affected Parties

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.
- Made available to each participant. A copy of a 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.

Finally, where a hard copy case file is maintained, a copy of an acknowledgment of receipt of Pacific Gateway's grievance and complaint procedures shall be signed by the participant and included in each participant's case file. Where an electronic file is maintained, staff must make a note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it.

Pacific Gateway has the responsibility to provide technical assistance to the complainants, including those grievances or complaints against Pacific Gateway. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as WIOA regulations, local rules, policies, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring Pacific Gateway 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 Pacific Gateway, its service providers, AJJC partners, or subrecipients. The filing of the grievance or complaint will be considered a request for a hearing, and Pacific Gateway shall issue a written decision 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, Pacific Gateway shall obtain the following information 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 WIOA, WIOA regulations, grant, or other agreements under WIOA, believed to be violated.
- Grievances or complaints against the individuals, including staff or participants, shall indicate how those individuals did not comply with the WIOA law, regulation, policy or contract.
- 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 extended for grievances or complaints that are refiled with amendments. Grievances or complaints maybe withdrawn at any

time prior to the issuance of the hearing officer's decision. Pacific Gateway shall send a copy of the grievance or complaint to the respondent.

C. Informal Resolution

Pacific Gateway shall notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievance and complaints prior to a 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, Pacific Gateway 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 informal resolution process, Pacific Gateway shall attempt to contact the complainant and have him or her provide a written withdrawal of the complaint within days of the receipt of the notice or resolution or impasse where a complainant decides not to proceed to an administrative hearing. Pacific Gateway shall maintain copies of correspondence in their 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 who 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. The 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.

E. Conduct of Hearings

An impartial hearing officer shall conduct the hearing. Pacific Gateway will 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 and with strict rules of evidence not being applicable and according to the procedures established by Pacific Gateway. 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.

F. Decision

No 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 issue(s) 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.
- 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 from Pacific Gateway 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 Division, MIC 22-M
 Employment Development Department
 P.O. Box 826880
 Sacramento, CA 94280-0001

III. State-Level Grievance and Complaint Procedures

Title 20 CFR Section 683.600 through 683.650 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 procedures as described in Workforce Investment Act Directive WIAD05-17, Audit Resolution.

A. State-Level Informal Resolution and Hearing Procedures

All complaints of noncriminal violations 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 request for State hearings shall include the same basic elements necessary for local-level hearings. These include:

- 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 WIOA, WIOA regulations, grant, or other agreements under WIOA, believed to be violated.
- Grievances or complaints against the individuals, including staff or participants, shall indicate how those individuals did not comply with the WIOA law, regulation, policy or contract.
- 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 the 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. The 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 a 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 days from the date on which the complainant received an adverse decision from the 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 result of filing the complaint.

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

- Full name, telephone number, and mailing address of the complainant.
- Full name, telephone number, and mailing address of the LWDA.
- A statement of the basis of the request or appeal.
- 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 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 and evidentiary hearing before a hearing officer. The Chief of CRD shall notify the concerned parties of 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. The statements must 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.

C. 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 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 the references to the “administrative law judge” or “ALJ” shall mean “hearing officer.”

D. EDD State Review Panel

1. Following the 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 issue(s) 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, if any, to be taken.
2. The State Review Panel shall not conduct a new evidentiary, 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 for the decision of the LWDA, and shall issue a written decision to the concerned parties within 60 days of receipt by the 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 issue(s) 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 corrective action, if any, to be taken.
 - Notice of the right of either party to file an appeal to the Secretary of Labor.

E. 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.

F. 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.
 - 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.

G. Federal-Level Appeal Process

Under Title 20 CFR Section 683.630, 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 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:

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 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

REFERENCES

- WIOA Section 181 (c)
- Title 20 CFR Part 683.000
- Title 29 CFR Part 37.35
- Workforce Investment Act Directive WIAD05-17, "Audit Resolution" (May 25, 2006)
- Workforce Services Directive WSD08-04, "Grievance and Complaint Procedures" (September 3, 2008)

INQUIRIES

For questions or assistance related to this policy, please contact Pacific Gateway Workforce Innovation Network staff at (562) 570-3748.

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