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Community Resources

May 26, 2021

To: WIOA Subrecipients of the Orange County
Workforce Development Area

From: Carma Lacy
Director of Workforce Development

Subject: Program Grievance and Complaint Policy
Information Notice No. 21-OCWDB-10
Supersedes Information Notice No. 18-OCDB-04

PURPOSE

To provide guidance on grievance and complaint procedures for complaints alleging noncriminal violations of the requirements of the Workforce Innovation and Opportunity Act (WIOA) in the operation of local WIOA programs and activities.

REFERENCES

- WIOA (Public Law 113-128) Section 181(c)
- Title 20 Code of Federal Regulations (CFR) Sections 683.600 and 683.610
- Title 29 CFR Section 38.9
- Title 22 California Code of Regulations (CCR), Sections 5050 – 5070
- EDD WSD18-05 *WIOA Grievance and Complaint Resolution Procedures* (September 4, 2018)

EFFECTIVE DATE

This policy is effective immediately upon issuance.

BACKGROUND

Under WIOA Section 181(c), each Local Workforce Development Area (Orange County Workforce Development Board (OCWDB) in Orange County) and direct recipient of WIOA Title I funding is required to establish and maintain procedures for participants and other interested parties to file grievances and complaints alleging violations of program requirements.

Guidance is to include the receipt, hearing, resolution, and appeals process of grievances and complaints at the local level. These procedures apply only to programmatic complaints alleging violations of WIOA Title I requirements in the operation/administration of WIOA programs and activities or of a decision resulting from a violation of the One-Stop Center Code of Conduct Policy.



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For information on complaints alleging discrimination under WIOA Section 188 and/or Title 29 CFR Part 38, see OCWDB Nondiscrimination and Equal Opportunity Policy. For information on complaints alleging criminal fraud, waste, abuse, or other criminal activity, see OCWDB Incident Reporting Policy.

Definitions

AJCC – America’s Job Center of California

Complainant – Any participant or other interested or personally affected party alleging a noncriminal violation of WIOA Title I requirements.

Complaint file – A file that is maintained in a central location within each office, which includes a copy of each complaint filed along with pertinent documentation.

Compliance Review Office – The organization within the EDD that oversees the administrative resolution of WIOA programmatic complaints.

Days – Consecutive calendar days, including weekends and holidays.

Grievance or complaint – A written expression by a party alleging a violation of WIOA Title I, regulations promulgated under WIOA, recipient grants, subgrants, or other specific agreements under WIOA.

Hearing Officer – An impartial person or group of persons that shall preside at a hearing on a grievance or complaint.

Participant – An individual who has been determined to be eligible to participate in and who is receiving services under a program authorized under WIOA.

Participant case file – Either a hard copy or an electronic file.

Recipient – An entity to which a WIOA grant is awarded directly from the U.S. Department of Labor (DOL) to carry out a program under WIOA Title I.

Policy and Procedures

General Principles and Requirements

1. Grievances or complaints must be filed within one (1) year of the alleged violation.
2. All grievances, complaints, amendments, and withdrawals must be in writing.
3. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, and discrimination.
4. Service Providers must make reasonable efforts to ensure the grievance and complaint policy and corresponding information is provided to each participant and will be understood by affected participants and individuals, including youth and individuals with limited English proficiency. These efforts must comply with the language requirements of Title 29 CFR Section 38.9.
5. Complainants have the right to be represented, at their own expense, by a person(s) of their choosing.

6. Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions by AJCC partners and Service Providers, has the right to file a grievance or complaint.

Notice to Affected Parties

Service Providers must ensure that WIOA participants receive initial and continuing notice of the local grievance and complaint procedures and instructions on how to file a complaint. The information must be:

1. Posted in a public location and be made available to any interested parties and members of the public.
2. Provided in writing to each participant. If a participant is unable to read, the Service Provider must either read it aloud to the participant or provide a recording of the policy. A copy of a written description of the local grievance and complaint procedure shall include:
 - Notification that the participant has the right to file a grievance or complaint at any time within one (1) year of the alleged violation;
 - Instructions and timeline for filing a grievance or complaint; and
 - Notification that the participant has the right to receive technical assistance. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIOA regulations, local rules, contracts, etc., and providing clarification and interpretation of relevant provisions.

The Summary of Rights and Program Grievance and Complaint Form (Attachment I) shall be used by all Service Providers and shall be provided in appropriate formats to individuals with visual impairments. Reasonable efforts must be made to assure that the form contents are understood by participants, including those who are limited English-speaking.

Where a hard copy case file is maintained, staff must include a signed copy of the Summary of Rights and Program Grievance and Complaint Form in each participant's case file. Where an electronic case file is maintained, Service Provider staff must either: (1) enter into CalJOBS a case note indicating that this notification did occur, the date of the notification, and the name of the staff person who provided it, or (2) scan a signed copy of the Summary of Rights and Program Grievance and Complaint Form and upload it to the participant's CalJOBS case file.

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 the Service Provider or OCWDB. The filing of the grievance or complaint with either the Services Provider or OCWDB shall be considered as a request for a hearing, and a written decision regarding the grievance or complaint must be issued within 60 days of it being filed.

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

1. Full name, telephone number, and mailing address of the complainant;
2. Full name, telephone number, and mailing address of the agency involved (respondent);
3. A clear and concise statement of the facts and dates describing the alleged violation;
4. The provisions of the WIOA, or the regulations, grant, or other agreements under the WIOA believed to have been violated;

5. 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
6. 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. Assistance in compiling the required information is available through the Service Provider or OCWDB Equal Opportunity (EO) Officer.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the start of the hearing. Grievances or complaints may not be amended to add new issues unless the complainant withdraws and resubmits the complaint. However, the one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision.

Informal Hearing

Service Providers are to use informal conferences to attempt to achieve a resolution for each complaint. Good faith efforts must be made to resolve all grievances or complaints prior to the scheduled formal 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.

1. A designated Service Provider staff member will meet with the complainant to resolve the problem within ten (10) days of receiving the complaint or grievance. If the issue is not resolved at this level, the Service Provider's designated manager will review the case and its facts, prior to meeting with the complainant, so that an appropriate resolution can occur.
2. A meeting with the complainant should take place; however, failure to do so should not preclude the complainant's right to request a hearing on the subject.
3. If there is a mutually satisfactory resolution to which all parties agree, the manager will write a brief report for the file stating the issues and resolution. The matter will be considered closed.

When the complaint has been resolved through the informal resolution process, the provider shall attempt to contact the complainant and have him or her provide a written withdrawal of the complaint within five (5) days of the receipt of the notice of resolution or impasse where a complainant decides not to proceed to the local hearing. The Service Provider shall maintain copies of correspondence in the complainant's file.

Should a complaint not be resolved during the Informal Hearing stage, the Service Provider must refer the complaint within two (2) days to the OCWDB EO Officer for a Formal Hearing. The Service Provider must ensure that every grievance or complaint not resolved informally or not withdrawn is given a formal hearing, regardless of the apparent merit or lack of merit of the grievance or complaint.

Notice of Formal Hearing

Hearings shall be conducted within 30 days of the filing of a grievance or complaint. The complainant and the respondent shall be notified in writing by OCWDB EO Officer of the hearing ten (10) days prior to the date of the scheduled date. 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 ensure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the OCWDB EO Officer issuing the notice.
- Advice as to where further information or assistance may be obtained.

Hearing Process

An impartial hearing officer shall conduct the hearing. According to EDD WSD18-05, members of the Local Workforce Development Board and the local Chief Elected Official(s) are considered interested parties and cannot legally conduct an impartial hearing. To fulfill this condition, OCWDB shall solicit assistance from Riverside County Workforce Development Board staff to conduct the hearing and serve as the hearing officer. If the Riverside County staff are not available, County of Orange OC Community Resources grievance officers may be utilized.

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

1. 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.
2. The hearing will be recorded electronically or by a court reporter.
3. Full regard must be given to the requirements of due process to ensure a fair and impartial hearing.
4. The hearing officer will ensure that everyone involved understands the proceedings.
5. The hearing officer will summarize the issues brought forth and the manner in which the hearing will be conducted.
6. The burden of proof is to be reasonable and will depend upon circumstances of the case involved. Generally, the party making the complaint is obligated to establish the party's case, and the party's information should be given first to explain the basis of their complaint.
7. If the parties involved or their representatives do not know how to ask the right or pertinent questions, the hearing officer must step in to elicit all material and relevant facts.

Decision

The hearing officer shall provide a written decision to OCWDB following the formal hearing. Not later than sixty (60) days after the filing of the grievance or complaint, OCWDB EO Officer shall mail the written decision to both parties by first class mail. The hearing officer's decision shall contain the following information:

1. The names of the parties involved;
2. A statement of the alleged violation(s) and issues;
3. A statement of the facts;

4. The hearing officer's decision and the reasons for the decision; and
5. A statement of corrective action or remedies for violations, if any, to be taken.

OCWDB-Level Informal Resolution and Hearing Procedures

A complainant may file a grievance or complaint directly with the OCWDB. All complaints shall be filed in writing with the EO Officer of the OCWDB:

Equal Opportunity Officer
Orange County Workforce Development Board
Orange County Community Services
1300 S. Grand Ave., Bldg. B, Second Floor
Santa Ana, CA 92705

Requests for an OCWDB hearing shall include the same elements listed in the "Form and Filing of Grievance or Complaint" section of this policy:

1. Full name, telephone number, and mailing address of the complainant;
2. Full name, telephone number, and mailing address of the respondent (agency involved);
3. A clear and concise statement of the facts and dates describing the alleged violation;
4. The provisions of the WIOA or the regulations, grant, or other agreements under the WIOA believed to have been violated;
5. 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
6. The remedy sought by the complainant.

Upon receipt, the OCWDB EO Officer shall review the grievance or complaint and provide an opportunity for an informal resolution. The OCWDB EO Officer shall notify the complainant and, if applicable, the respondent and attempt to resolve the grievance or complaint informally. If the grievance is not resolved during the informal hearing, the complaint will be referred to the appointed hearing officer for a formal hearing.

Appeal

If a complainant does not receive a decision from the OCWDB within sixty (60) days of the filing of the grievance or complaint, receives an adverse decision, or allegedly experiences restraint, coercion, or reprisal as a result of filing the complaint, the complainant then has the right to file an appeal with EDD.

1. Adverse Decision - Request for an EDD review or appeal shall be filed or postmarked (if mailed) within ten (10) days from the date on which the complainant received an adverse decision from OCWDB.
2. No OCWDB Decision - The grievance/complaint shall be filed with EDD within fifteen (15) days in which a complainant should have received a decision from OCWDB.
3. Retaliation – The grievance/complaint may be filed with EDD within fifteen (15) days from the date on which an instance of restraint, coercion, or reprisal was alleged to have occurred as a result of filing the complaint.

The appeal or request for EDD review must be in writing, signed, and dated by the complainant and include the following information:

1. The full name, telephone number, and mailing address of the complainant;
2. The full name, telephone number, and mailing address of OCWDB;
3. A statement of the basis of the request or appeal; and

4. Copies of relevant documents, such as the complaint filed with OCWDB and the local decision, if any.

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

Once a complaint or grievance reaches the state level, procedures detailed in EDD WSD18-05 WIOA Grievance and Complaint Resolution Procedures will apply.

Complaint Log

Each Service Provider shall maintain an annual (calendar year) complaint log (Attachment II) to record receipt of a written complaint by the complainant or complainant's representative. Logs must be available for review at the request of OCWDB, federal, state, or local monitoring staff.

Service Providers are required to submit logs by **January 30th** annually to the EO Officer and the respective OCWDB Program Manager/Administrator. If no complaint was filed for the calendar year, the Service Provider will note 'None to report' for the calendar year.

ACTION

Bring this policy to the attention of all staff and all relevant parties.

INQUIRIES

If you have any questions regarding this policy, please contact your Contract Administrator at 714-480-6500.

ATTACHMENTS

Attachment I: Summary of Rights and Program Grievance and Complaint Procedures Form and Flow Chart

Attachment II: Orange County Workforce Development Board Complaint Log

Procedure Flowchart

Day 1	
Grievance/Complaint Submission	Complainant
By Day 10	
Conduct Informal Hearing	Service Provider/OCWDB
2 Days Later/By Day 12	
Inform OCWDB for need of formal hearing	Service Provider
Days 12-20	
Schedule formal hearing Inform complainant of hearing date (must be done 10 days prior to scheduled hearing)	OCWDB/Hearing Officer
By Day 30	
Conduct Formal Hearing	Hearing Officer
Days 30-55	
Prepare decision and submit to OCWDB	Hearing Officer
By Day 60	
Written decision must be received by complainant	OCWDB

No Decision/Appeal Timeline
<p>Complainant may appeal to State EDD after the 60- day timeframe.</p> <p>Within 10 days - Adverse decision from OCWDB</p> <p>Within 15 days – No decision received from OCWDB</p>



Attachment II Annual Complaint Log



Service Provider:

Calendar Year:

None to report

Date of Complaint	Name of Complainant	Address of Complainant	Email Address of Complainant	Status of Complaint	Date of the Alleged Incident	Grounds of Complaint	Description of Complaint	Name of Respondent	Is Respondent a Recipient?	Disposition/Outcome	Date of Disposition	ADR* Used?
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
						<input type="checkbox"/> Program Complaint <input type="checkbox"/> Discrimination			<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

*ADR = Alternative Dispute Resolution (Mediation) for EO/Discrimination Complaints