

TULARE COUNTY WORKFORCE INVESTMENT BOARD (TCWIB) WORKFORCE INVESTMENT ACT TITLE I ACTIVITIES	DATE: December 17, 2008
	SUBJECT: Grievance and Complaint Procedures

TCWIB DIRECTIVE

TCWIBD-08-14

TO: TCWIB Service Providers
TCWIB Staff

SUBJECT: GRIEVANCE AND COMPLAINT PROCEDURES

EXECUTIVE SUMMARY

Purpose:

This directive (1) provides guidance to Local Workforce Investment Areas (LWIA) and subrecipients of the Workforce Investment Act (WIA) Title I grant funds in the development, maintenance, and implementation of local-level grievance and complaint procedures. These procedures cover complaints alleging noncriminal violations of the requirements of WIA in the operation of local WIA programs and activities; and (2) transmits policy governing WIA Title I related grievance and complaint procedures at the State level. It also contains minor revisions to the data verification requirements for the WIA Adult and Dislocated Worker programs, enabling the LWIAs to document the verification of customer data in an electronic environment rather than maintain hard copy files.

Scope:

This directive requires that contractors receiving WIA Title I grant funds comply with the grievance and complaint provisions of WIA. This directive applies to programmatic grievances and complaints pursuant to WIA Section 181(c) and does not address the procedures for processing complaints alleging discrimination under WIA Section 188 and/or Title 29 Code of Federal Regulations (CFR) Part 37. 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 Division (CRD) through the procedures for reporting incidents described in WIA Directive WIAD02-3.

Effective Date:

This directive is effective upon date of issuance. This Directive supersedes TCWIBD 08-12, date October 13, 2008.

REFERENCES:

- WIA Section 181(c)
- Title 20 CFR Part 667.600
- Title 29 CFR Section 37.35
- EDD - WIAD08-4
- Workforce Services Directive WSD07-11, Subject: Data Verification Requirements, WIA Customer Data Collection (June 16, 2008)
- WIA Directive WIAD05-17, Subject: Audit Resolution (May 25, 2006)

CWIB-IMPOSED REQUIREMENTS:

No locally imposed requirements.

FILING INSTRUCTIONS:

This directive supersedes TCWIB Directive TCWIBD-03-8 dated May 20, 2004. Retain this directive until further notice.

BACKGROUND:

Title 20 CFR Section 667.600 requires each LWIA, State, and direct recipient of funds under Title I of WIA, excluding Job Corps, to establish and maintain a procedure for grievances and complaints from participants and other interested parties affected by the local workforce investment system, including One-Stop partners and service providers and the statewide workforce investment programs. (Job Corps complaint/grievance requirements can be found at Title 20 CFR Section 670.990.)

POLICY AND PROCEDURES:

Definition(s):

Complainant means any participant or other personally interested or personally affected party alleging a noncriminal violation of the requirements of WIA.

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 documentation.

Days mean consecutive calendar days, including weekends and holidays.

Grievance or complaint means a written expression by a party alleging a violation of WIA, regulations promulgated under WIA, recipient grants, sub-agreements, or other specific agreements under WIA. All complaints, amendments, and withdrawals shall be in writing. These procedures are intended to resolve matters, which concern actions arising in connection with the WIA Title I grant program.

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

Local Workforce Investment Area includes the LWIA administrative entity and its subrecipients to which the administrative entity has delegated the complaint and grievance resolution process.

Participant means an individual who has been determined to be eligible to participate in, and who is receiving services under a program authorized by WIA as defined in WIA Section 101(34).

Participant case file means either a hard copy or an electronic file.

Recipient means an entity to which a WIA grant is awarded directly from DOL to carry out a program under Title I of WIA. The State is the recipient of funds awarded under WIA Sections 127(b)(1)(C), 132(b)(1)(B), and 132(b)(2)(B).

State Review Panel is an entity within EDD composed 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 recommendations regarding grievances or complaints.

Subrecipient means an entity to which a subgrant is awarded and which is accountable to the recipient (or higher tier subrecipient) for the use of the funds provided.

Policy:

It is the policy of the State of California that:

The principles and procedures set forth in this directive shall be used by all California LWIAs in the development of local-level grievance and hearing procedures; and

- The principles and procedures set forth in this directive shall govern the treatment and handling of all grievances or complaints in connection with all WIA Title I grant programs and activities conducted by the State, or pursuant (directly or indirectly) to subgrants from the State.

The WIA Title I Governor's 15 and 25 Percent subgrantees (except LWIAs) are not required to develop a process for dealing with grievances and complaints from participants and interested parties, but must designate an individual who will be responsible for adopting and publishing the EDD grievance and complaint procedures. Therefore, in lieu of local complaint procedures, WIA Title I Governor's 15 and 25 Percent subgrantees must adopt the EDD's State-Level Grievance and Complaint Procedures.

Procedures:

I. GENERAL PRINCIPLES AND REQUIREMENTS

These procedures will guide the receipt, hearing, and resolution of noncriminal grievances and complaints relating to WIA Title I grant programs and activities that are funded with WIA Title I grant monies provided to the State by DOL. These procedures will be available for use by all individuals and entities; including WIA Title I grant participants, LWIA staff, subrecipients of LWIAs, and other interested parties. Local 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." [Title 20 CFR Section 667.600(c)(3)]. Additionally, all California LWIAs and subrecipients of WIA 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 the language requirements of Title 29 CFR Section 37.35.

At all levels of the grievance or 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. LWIA GRIEVANCE AND COMPLAINT PROCEDURES

Pursuant to Title 20 CFR Sections 667.600 through 667.610, the State requires LWIAs to establish procedures for resolving grievances and complaints alleging a violation of WIA Title I, regulations, grants, or other agreements under WIA. The following outlines the procedures for resolving issues arising in connection with WIA Title I grant programs operated by each administrative entity for the LWIAs or its subrecipients. Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions by One-Stop partners and service providers, has the right to file a grievance or complaint with the LWIA.

A. Notice to Affected Parties

Initial and continuing notice of the 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 acknowledgement of receipt of the local grievance and complaint procedures shall be signed by the participant and included in each participant's case file. Where an electronic case 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.

The LWIAs have the responsibility to provide technical assistance to the complainants, including those grievances or complaints against the LWIAs. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIA, regulations, local rules, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring LWIAs 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 the LWIAs, its service providers, One-Stop partners, or subrecipients. The filing of the grievance or complaint will be considered a request for a hearing, and the LWIA 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, the State recommends that the LWIAs 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 the WIA, the WIA regulations, grant, or other agreements under the WIA, believed to have been violated;
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIA law, regulation, or contract; and
- 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 complainant should send complaints to:

**Adam Peck, Executive Director
Tulare County Workforce Investment Board
4025 West Noble Avenue, Suite A
Visalia, CA 93277**

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 not extended for grievances or complaints that are refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. The LWIA shall send a copy of the grievance or complaint to the respondent.

C. Informal Resolution

The LWIA 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 WIA Title I, grant or any agreements under WIA, the LWIA 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 LWIA 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 LWIA shall maintain copies of correspondence in the complainant's 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 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.

E. Conduct of Hearings

An impartial hearing officer shall conduct the hearing. The State suggests that LWIAs 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 LWIAs. 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

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.

G. Appeal

If a complainant does not receive a decision at the LWIA 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 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 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 LWIA level, remanding grievances and complaints related to the local WIA Title I programs to the LWIA 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 the procedures as described in WIA Directive WIAD01-3, Audit Resolution.

A. State-Level Informal Resolution and Hearing Procedures

All complaints of noncriminal violations of the requirements of WIA 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 WIA, the WIA regulations, grant, or other agreements under the WIA, believed to have been violated;
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIA law, regulation, or contract; and
- 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 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 WIA or any other federal regulations involved.
- 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.

B. Appeals of LWIA 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 LWIA 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 LWIA 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 LWIA 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.

2. 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 LWIA;
- A statement of the basis of the request or appeal; and
- Copies of relevant documents, such as the complaint filed at the LWIA and the local decision, if any.

3. If an evidentiary hearing was held at the LWIA level, the EDD shall request the record of the hearing from the LWIA and shall review the record without scheduling an additional hearing. If an evidentiary hearing was not held at the LWIA level, the EDD shall instruct the LWIA to hold a hearing within 30 days of receipt of the appeal or request for an EDD review. If the LWIA 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 an evidentiary hearing before a hearing officer. The Chief of CRD shall notify the concerned parties and the LWIA 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.

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 that references to the "administrative law judge" or "ALJ" shall mean "hearing officer."

D. EDD State Review Panel

1. 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.
2. The State Review Panel shall not conduct a new evidentiary hearing, but shall review the record established by either the LWIA 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 LWIA, 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.
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 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.

E. Referral of Local Grievances or Complaints

Grievances or complaints filed directly with the State related to the local WIA programs will be remanded to the local area grievance process in accordance with LWIA Grievance and Complaint Procedures.

F. Remedies

1. Remedies that may be imposed for a violation of any requirement under WIA Title I shall be limited to:
 - Suspension or termination of payments under WIA Title I;
 - Prohibition of placement of a participant with an employer that has violated any requirement under WIA 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.
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 WIA Title I.

G. 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 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 ETA Regional Administrator-Region 6, U.S. Department of Labor, Office of Regional Administrator, P.O. Box 193767, San Francisco, CA 94119-3767 and the opposing party.

ACTION:

Bring this directive to the attention of all staff.

INQUIRIES:

Please direct inquiries about this directive to the Tulare County Workforce Investment Board Administration office, at (559) 713-5200.



Adam Peck
Executive Director
AP:EC: