

**DRAFT DIRECTIVE
COVER PAGE**

WIOA GRIEVANCE AND COMPLAINT RESOLUTION PROCEDURES

GENERAL INSTRUCTIONS

The attached directive is being issued in draft to give the Workforce Development Community the opportunity to review and comment prior to final issuance.

Submit any comments by email no later than Friday, March 22, 2019.

All comments received within the comment period will be considered before issuing the final directive. Commenters will not be responded to individually. Rather, a summary of comments will be released with the final directive.

Comments received after the specified due date will not be considered.

Email: PGPullen@tularewib.org
Include "Draft Directive Comment" in the email subject line.

Mail: Workforce Investment Board of Tulare
County Attn: Patricia G. Pullen
309 W. Main St., Ste. 120
Visalia, CA 93291

If you have any questions, contact Patricia Pullen at 559-713-5200

WORKFORCE INVESTMENT BOARD OF TULARE COUNTY WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I	DATE: March 7, 2019
	SUBJECT: WIOA Grievance and Complaint Resolution Procedures

WIB DRAFT DIRECTIVE

TUL 19-01

TO: WIB Subrecipients
 WIB Staff

SUBJECT: WIOA GRIEVANCE AND COMPLAINT RESOLUTION PROCEDURES

EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding grievances and complaints alleging noncriminal violations of Workforce Innovation and Opportunity Act (WIOA) Title I requirements. This policy applies to the Workforce Investment Board of Tulare County (WIB) and its WIOA Title I subrecipients, and is effective immediately.

This policy contains some state-imposed requirements. All state-imposed requirements are indicated by **bold, italic type**.

This policy contains no WIB-imposed requirements.

This directive is effective upon date of issuance. This Directive supersedes TCWIBD 08-14, dated December 17, 2008. Retain this directive until further notice.

REFERENCES

- WIOA (Public Law 113-128) Section 181(c)
- Title 20 Code of Federal (CFR) Sections 683.600 and 683.610
- Title 29 CFR Section 38.9
- Title 22 California Code of Regulations (CCR) Division 1, Subdivision 2, Chapter 2, Sections 5050-5070
- Workforce Services Directive WSD18-05, WIOA Grievance and Complaint Resolution Procedures (September 4, 2018)

BACKGROUND

Under WIOA Section 181(c), Local Areas, and direct recipients of Title I funding are required to establish and maintain procedures for participants and other interested parties to file grievances and complaints alleging violations of WIOA Title I requirements. These procedures must be made

available to all relevant parties within the Local Area, including America's Job Center of California (AJCC) partners, service providers, and program participants.

This Directive contains guidance regarding the receipt, hearing, resolution, and appeals process of WIOA Title I grievances and complaints at the local, state and federal level in accordance with Title 20 CFR Sections 683.600 and 683.610. These procedures apply only to programmatic complaints alleging violations of WIOA Title I requirements in the operation/administration of WIOA programs and activities. For information on complaints alleging discrimination under WIOA Section 188 and/or Title 29 CFR Part 38, see Workforce Investment Board of Tulare County's (WIB) *Nondiscrimination and Equal Opportunity Procedures Directive* TUL 17-05. For information on complaints alleging criminal fraud, waste, abuse, or other criminal activity, see Workforce Investment Board of Tulare County's *Incident Reporting Directive* TUL13-03. Lastly, for appeals of administrative or financial sanction(s) on a Local Area resulting from monitoring, investigations, or audits, see Workforce Investment Board of Tulare County's *Audit Resolution Directive* WIBD 10-03.

POLICY AND PROCEDURES

General Requirements

The procedures set forth in EDD Workforce Services Directive WSD 18-05 were used by the WIB in the development of this Directive on grievance, complaint, and hearing procedures, and govern the treatment and handling of all grievances or complaints connected with the WIB and its WIOA Title I grant subrecipients.

Grievances or complaints must be filed within one year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, and discrimination.

Furthermore, the WIB and its subrecipients of WIOA Title I funds must make reasonable efforts to ensure their policies and corresponding information 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.

Definition(s)

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.

Local Area – the Local Area administrative entity and its subrecipients to whom the administrative entity has delegated the grievance and complaint resolution process.

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.

State Review Panel – an entity within the EDD composed of representatives from EDD's Compliance Review Office, Legal Office, and Director's Office. This panel shall review and approve or disapprove decisions and recommendations regarding grievances or complaints.

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

WIB Grievance and Complaint Resolution Procedures

The following are the procedures established by the WIB for resolving programmatic grievances and complaints alleging violations of WIOA Title I. These procedures are intended to resolve issues related to WIOA Title I grant programs operated by the WIB and its subrecipients.

1. Notice to Affected Parties

WIB subrecipients must provide a copy of the WIB's grievance and complaint procedures to each participant. These procedures include the following:

- Notification that the participant has the right to file a grievance or complaint at any time within one year of the alleged violation.
- Instructions and timelines for filing a grievance or complaint.
- Notification that the participant has the right to receive technical assistance from the WIB in filing the grievance or complaint.
- Notification that the participant may file an appeal or request a separate review by EDD if they experience an incident of restraint, coercion, or reprisal as a result of filing a complaint.

The WIB grievance and complaint procedures must be posted in a public location and made available to any interested parties or members of the public.

Subrecipient staff must scan a signed copy of an acknowledgement of receipt of the WIB Grievance and Complaint Procedures Form and attach it to the participant's case file in CalJOBS.

The WIB has the responsibility to provide technical assistance to complainants, including those filing grievances or complaints against the WIB. Technical assistance includes, but is not limited to, providing instructions on how to file a complaint, and providing copies of relevant documents such as the WIOA, federal regulations, state laws and regulations, WIB procedures, and/or contracts. This does not require WIB to violate any rule of confidentiality or provide legal advice.

2. Filing a Grievance or Complaint

The official filing date of a grievance or complaint is the date it is received by the WIB... The filing shall be considered a request for a hearing and the WIB shall issue a written decision within 60 days of the official filing date. The WIB shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, signed, and dated by the complainant. The WIB should obtain the following information for all complaints. However, the absence of any of the requested information shall not be used as a basis for dismissing the grievance or complaint.

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, federal regulations, grant, or other agreements under WIOA believed to have been violated.
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

The complainant should send complaints to:

**Laura Castanon, Staff Services Analyst II
Workforce Investment Board of Tulare County
309 W. Main Street, Suite 120
Visalia, CA 93291**

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.

3. Informal Resolution

The WIB shall notify the complainant and respondent of the opportunity for an informal resolution. Respondents must make a good faith effort to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either the complainant or respondent to exert a good faith effort shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered a part of the facts to be judged during the resolution process. The WIB must assure that all grievances or complaints not resolved informally or not withdrawn are given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

If a complainant and respondent are able to reach an informal resolution, a notice of resolution must be sent to the complainant and entered into the complaint file. If the informal resolution leads to an impasse between the complainant and respondent, the complainant may choose to not proceed to a hearing. If this occurs, a notice of impasse must be sent to the complainant and entered into the complaint file. In the event of resolution or impasse, the WIB must request the complainant to provide a written withdrawal of the complaint within 10 days of receipt of the notice of resolution or impasse.

4. Local Level Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of the filing date of the grievance or complaint:

a. Notice of Hearing

The WIB must notify the complainant and respondent in writing of the hearing at least 10 days prior to the date of the hearing. The 10-day notice period may be shortened with written consent from both parties. The notice shall be in writing and contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- A statement of the alleged violation(s). The statement 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. Conduct of Hearing

An impartial hearing officer shall conduct the hearing. ***All members of the WIB and the Tulare County Board of Supervisors are considered interested parties and cannot conduct an impartial hearing.*** The state suggests the WIB seek impartial hearing officers from among the staff of legal offices or personnel departments of local 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 must be conducted in an informal manner and not be bound by strict rules of evidence. All hearings must follow any applicable procedures established by the WIB. Both parties have the right to be represented at their own cost, present written and oral testimony, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing must be recorded electronically or by a court reporter.

c. Decision of Hearing

The hearing officer shall provide a written decision to the WIB. The WIB shall mail the written decision to both parties by first class mail no later than 60 days after the filing date of the grievance or complaint. The decision shall contain the following information:

- The names of the parties involved.
- A statement of the alleged violation(s) and related issues.
- A statement of the facts.
- The hearing officer's decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.
- A notice of the right of either party to request an appeal of the decision by the State Review Panel within 10 days of receipt of the decision.

5. Local Level Appeal

If a complainant does not receive a decision within 60 days of the filing date of the grievance or complaint, or receives an adverse decision, the complainant has the right to file an appeal with the state. See the subsection below entitled *Appeals of Local Level Decisions or Requests for EDD Review*.

State Level Grievance and Complaint Resolution Procedures

As required under Title 20 CFR Section 683.600(d), the state must establish procedures for resolving appeals of decisions issued at the local level, grievances or complaints regarding statewide workforce programs, and grievances or complaints alleging state violations of WIOA Title I requirements.

Appeals of Local Level Decisions or Requests for EDD Review

If the WIB has issued an adverse decision or failed to follow the procedures in this Directive, the complainant may file an appeal with the state. Additionally, if the WIB has not issued a decision within the 60 day time limit, or if there has been any incident(s) of restraint, coercion, or reprisal at the local level as a result of filing a grievance or complaint, the complainant may file a request for EDD review.

The appeal or request for EDD review must be in writing, signed, and dated by the complainant. The state will attempt to obtain the following information. However, the absence of any of the requested information will not be used as a basis for dismissing the appeal or request for EDD review.

- The full name, telephone number, and mailing address of the complainant and the Local Area's administrative entity.
- A statement of the basis of the appeal or request for EDD review.
- Copies of relevant documents, such as the complaint filed with the WIB and their decision, if any was received.

Appeals must be filed or postmarked within 10 days from the date on which the complainant received an adverse decision from the WIB. Requests for EDD review must be filed or postmarked within 15 days from either of the following:

- 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.
- The date on which an instance of restraint, coercion, or reprisal was alleged to have occurred as a result of filing the complaint.

Complainants must submit appeals or requests for EDD review to the following address:

Chief, Compliance Review Office, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001

If an evidentiary hearing was held at the local level by the WIB, the Compliance Review Office shall request the record of the hearing from the WIB and the State Review Panel shall review the record without scheduling an additional hearing. The WIB is to provide written transcripts of any audio or visual recordings of the hearings via overnight mail. Within 10 days of receipt of the grievance or complaint, the Compliance Review Office shall notify the complainant and respondent of the opportunity for an informal resolution and proceed with the informal resolution process.

If an evidentiary hearing was not held at the local level by the WIB, the Compliance Review Office shall instruct the WIB to hold a hearing within 30 days of receipt of the appeal or request for EDD review. If the WIB refuses to hold a hearing within the required timeframe,

the EDD shall schedule an evidentiary hearing before an impartial hearing officer within the 30 day timeframe.

State Level Grievances and Complaints

All grievances or complaints alleging noncriminal, state violations of WIOA Title I requirements, or grievances or complaints by individuals or interested parties affected by statewide workforce programs shall be filed in writing with the Chief of the Compliance Review Office. The official filing date of the grievance or complaint is the date it is received by the Compliance Review Office. The filing shall be considered a request for a hearing and the State Review Panel shall issue a written decision within 60 days of the official filing date. The Compliance Review Office shall send a copy of the grievance or complaint to the respondent.

The grievance or complaint must be in writing, dated, and signed by the complainant. The state will attempt to obtain the following information for all complaints. However, the absence of any of the requested information will not be used as a basis for dismissing the grievance or complaint.

- Full name, telephone number, and mailing address of the complainant and respondent.
- A clear and concise statement of the facts and dates describing the alleged violation.
- The provision(s) of WIOA, federal regulations, state laws or regulations, grant, or other agreements under WIOA believed to have been violated.
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
- The remedy sought by the complainant.

The Chief of the Compliance Review Office or their designee shall review the grievance or complaint and notify the complainant and respondent of the opportunity for an informal resolution within 10 days of receipt. If the state cannot resolve the grievance or complaint informally, a hearing will be held.

EDD Hearing

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of the grievance or complaint. The complainant, respondent, and WIB (in cases of local level appeals and requests for EDD review) shall be notified in writing of the hearing at least 10 days prior to the hearing. The hearing shall be conducted by an impartial officer. The hearing notice shall contain the following information:

- The date of the notice, name of complainant, and the name of the party against whom the grievance is filed.
- The date, time, and location of the hearing.
- 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.

The EDD hearing shall be conducted in an informal manner without the application of strict rules of evidence. Both parties shall have the right to be represented, present written and/or oral testimony under oath and arguments, call and question witnesses, and request and examine records and documents relevant to the issues. The hearing shall be recorded either electronically or by a court reporter.

Title 22 CCR regulates the responsibilities and processes of EDD administrative law judges and hearings and as such, applies to the EDD hearings and hearing officers described in this Directive. Title 22 CCR Sections 5050 through 5070 outline all applicable state laws and must be adhered to by the EDD hearing officers. Examples of subjects addressed include special hearing accommodation, electronic hearings, ex parte communications, and consolidation of similar cases. All references to “administrative law judge” hold the same meaning as “hearing officer” in regard to these regulations.

State Review Panel

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 related issues.
- A statement of the facts.
- The EDD hearing officer’s decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.

The State Review Panel shall not conduct a new evidentiary hearing, but shall review the record established by either the WIB hearing or the EDD hearing. The State Review Panel shall issue a decision on the basis of the information contained within the record. The State Review Panel may accept, reject, or modify the EDD hearing officer’s recommendation or the decision of the WIB, and shall issue a written decision to the concerned parties within 60 days of the EDD’s receipt of the local level appeal, request for EDD review, or grievance or complaint.

The State Review Panel shall send 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 related issues.
- A statement of the facts.
- The State Review Panel’s decision and reasoning.
- A statement of the corrective action or remedies for violations, if any, to be implemented.
- A notice of the right of either party to file an appeal with the U.S. Secretary of Labor (Secretary).

Remanded Local Grievances and Complaints

Grievances or complaints filed directly with the state related to WIB programs will be remanded to the WIB. Reviews that reveal a trial issue, such as the hearing officer being an interested party, will be remanded to the WIB for a retrial of the grievance or complaint.

Federal Level Appeal Process

If the State Review Panel has issued an adverse decision regarding a grievance or complaint, or has not issued a decision within 60 days of receipt of a local level appeal, request for EDD review, or grievance or complaint, the complainant may file an appeal with the Secretary. This appeal process applies to grievances and complaints that originated at the local or state level.

Appeals of an adverse decision must be filed within 60 days of receipt of the adverse decision from the State Review Panel. In cases where the State Review Panel did not issue a decision, the complainant must file an appeal within 120 days of either of the following:

- The date on which the complainant filed the appeal of a local level decision or request for EDD review with the state.
- The date on which the complainant filed the grievance or complaint with the state.

All appeals to the Secretary must be sent to the DOL National Office via certified mail with return receipts requested. Copies of the appeal must simultaneously be provided to the DOL Employment and Training Administration (ETA) Regional Administrator and the respondent. Mailing addresses for the DOL National Office and ETA Regional Administrator are included below:

DOL National Office

Secretary of Labor
Attn: Assistant Secretary of ETA
U.S. Department of Labor 200 Constitution Avenue, NW
Washington, DC 20210

ETA Regional Administrator

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

Grievances or complaints filed directly with the Secretary that were not previously filed with the WIB and/or state will be remanded to the WIB or state, as appropriate.

The Secretary shall issue a final determination no later than 120 days after receiving the appeal.

Remedies

Remedies that may be imposed for a violation of any requirement under WIOA Title I shall be limited to the following:

- 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 of an employee, where applicable, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment.
- Other equitable relief, where appropriate.

None of the above 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.

ACTION

Please bring this directive to the attention of all WIB Subrecipients and WIB Staff.

INQUIRIES

Please direct inquiries about this directive to the WIB at (559) 713-5200.

Adam Peck
Executive Director

AP:PGP:llg

Attachment:

Grievance and Complaint Procedures Form 404 – Revised March 2019

**WORKFORCE INVESTMENT BOARD OF TULARE COUNTY
GRIEVANCE AND COMPLAINT PROCEDURES**

The Workforce Investment Board of Tulare County (WIB) has established procedures for resolving grievances and complaints alleging a violation of the Workforce Innovation and Opportunity Act (WIOA) Title I programs. WIOA Title I participants adversely affected by a decision or action by the local America's Job Center of California (AJCC), partners and/or service providers, have the right to file a grievance or complaint with the local workforce investment area.

The WIB is responsible to provide assistance to the complainants, including those against the local area itself. Such assistance includes providing instructions on how to file a grievance or complaint, provision of relevant copies of documents such as the WIOA regulations, local rules, contracts, etc., and provision of clarifications and interpretations of relevant provisions not in violation of rules of confidentiality.

Grievance or Complaint Form & Filing: The grievance or complaint must be in writing, signed and dated. For resolution purposes, the following information must be provided:

- 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 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.

The complainant should send complaints to: Laura Castanon, Staff Services Analyst II, Workforce Investment Board of Tulare County, 309 W. Main Street, Suite 120, Visalia, CA 93291.

If a complainant does not receive a decision at the local workforce development area 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. Items bulleted above should be submitted as a written notice of appeal to: Chief, Compliance Review Division, MIC 22-M, Employment Development Department, P. O. Box 826880, Sacramento, CA 94280-0001.

Further appeal at the federal level is available 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 no later than 120 days of the filing of the grievance or complaint with the State. The request for appeal must be submitted by certified mail, return receipt to: Attention: Secretary of Labor, S-2521, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington D.C., 20210.

Copies of WIB Directive TUL 19-01 and Grievance and Complaint Procedures are available at www.tularewib.org or (559) 713-5200.

I have read the above, understand its content and have received a copy of this form.

_____ Date
Print Applicant Name

_____ Parent/Guardian Signature (if under 18yrs.of age)
Applicant Signature