

SOP STANDARD OPERATION PROCEDURE	 FWDB <small>Foothill Workforce Development Board</small>	SOP# 2019-3
	FOOTHILL EMPLOYMENT AND TRAINING CONNECTION	Page 1 of 9
Dated: 2/2019	SUBJECT: Grievance and Complaint Procedures Policy	Authorized Signature

BACKGROUND AND PURPOSE

Under WIOA Section 181(c), each state, Local Area (Local Area), and direct recipient of Title I funding is 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.

The purpose of this policy is to provide guidance to Foothill Workforce Development Board (FWDB) staff and its subrecipients on the grievance and complaint procedures pertaining to complaints alleging noncriminal violations of Workforce Innovation and Opportunity Act (WIOA) Title I requirements.

This policy does not address complaints alleging discrimination under WIOA Section 188 and/or Title 29 CFR Part 38; discrimination complaints are resolved through complaint procedures outlined in the FWDB’s Nondiscrimination and Equal Opportunity Policy. This policy does not address complaints involving allegations of fraud, abuse or other criminal activity; such complaints must be reported directly to Department of Labor’s (DOL) Office of the Inspector General and the State of California Employment Development Department’s (EDD) Compliance Review Office (CRO) through the FWDB procedures for reporting incidents.

Grievances or complaints relating to procurements must be filed with the City of Pasadena Contracts/Purchasing Department.

DEFINITIONS

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 information.

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 by WIOA. Also, known as a “customer.”

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

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.

Service Provider - a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, employment, or supportive services to WIOA participants.

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 fund.

POLICY AND PROCEDURES

Grievances and 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.

Additionally, all recipients and subrecipients of WIOA Title I funds must make reasonable efforts to ensure that information about the content of the grievance and complaint procedures will be understood by affected participants and individuals, including youth and individuals with limited English proficiency. Such efforts must comply with the language requirement of Title 29 CFR Section 38.9.

LOCAL GRIEVANCE PROCEDURES

The Foothill Workforce Development Board (FWDB) has established this procedure for resolving grievances and complaints alleging a violation of WIOA Title I.

1. Applicants, participants, Job Center partners, service providers, bidders, WIOA funded staff or others alleging violations of WIOA, WIOA regulations, WIOA grants and sub grants, or other contracts under WIOA (other than discrimination complaints and fraud/abuse/criminal activity complaints) shall utilize this Grievance Procedure in filing a complaint. In all cases above, the complaining party has the right to ask for and receive help in filing the complaint or grievance. Individuals shall be informed of this right by either FWDB staff or the subcontractor as appropriate.
2. Except for complaints regarding discrimination and fraud/abuse/criminal activity, grievances arising from the actions of the FWDB, and/or its service providers must exhaust available remedies provided by this policy before such complaints are submitted to the State for resolution.
3. Complaints, unless otherwise specified, (except for those alleging fraud or criminal activity or discrimination) shall be filed with the Executive Director of the FWDB within

one year of the alleged occurrence.

4. Delegation Progress:

- a. Complaints against employers participating in On-the-Job Training (OJT) contracts, and which concern the terms and conditions of a participant's employment or OJT contract terms, shall first be handled directly with the employer or through the employer's grievance procedure. If the complaint cannot be resolved with an On-the-Job Training employer, the complaint shall be resolved in accordance with this grievance procedure.
- b. Complaints by WIOA funded personnel involving the terms and conditions of their employment shall first be handled pursuant to the employing agency's procedures. If the complaint cannot be resolved with an employing agency, the complaint shall be resolved in accordance with this procedure.
- c. Labor Standards Violations: Whenever participants have complaints alleging a California or federal labor standards violation, they shall use the established local and State Grievance Procedures or choose to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides.

All grievances not included in Section 4, a through c, above shall follow the procedures listed below:

1. Complaints must be made within one year of the alleged occurrence and must be in writing, signed by the complainant and include the following information:
 - Your full name, telephone number and address;
 - The name, telephone number and address of the respondent. The current Grievance Officer for the Foothill Workforce Development Board (FWDB) is Joumana Barakat, 1207 E Green Street, Pasadena, CA, 91106
 - A statement of the facts describing the alleged violation;
 - The provisions of the WIOA, the WIOA regulations, grant, or other agreements under the WIOA, believed to have been violated;
 - If the grievance is against individuals, a description of how those individuals did not comply with the WIOA law, regulation, or contract; and
 - The remedy sought.

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

2. Complaints should be sent to:

Foothill Workforce Development Board
Attn: Joumana Barakat
1207 E. Green Street
Pasadena, CA 91106

The Foothill Workforce Development Board shall investigate the complaints and attempt to resolve the matter informally within 30 days.

- 3. Informal Resolution:** The FWDB 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 such failure be considered in the resolution process. Where a complaint alleges a violation of WIOA Title I, WIOA grant or any WIOA agreement, the FWDB will ensure that every grievance or complaint not resolved informally, or not withdrawn is provided 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 information 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 FWDB will request the complainant provide a written withdrawal of the complaint within 10 days of receipt of the notice of resolution or impasse.

- 4. Notice of Hearing:** Hearings on any grievance or complaint shall be conducted within 30 days of filing of a grievance or complaint. Ten (10) days before the hearing date, FWDB staff shall notify the complainant and respondent of the hearing date in writing. 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 accurately reflecting the content of the grievance or complaint.
 - The name, address, and telephone number of the WDB staff contact person issuing the notice.
- 5. Conduct of Hearing:** An impartial hearing officer shall conduct the hearing. An impartial hearing officer is an individual from the staff of legal offices or personnel departments of municipalities or counties who will not be directly affected by the

resolution of the grievance or complaint, and who will not implement the resolution of a grievance or complaint.

The hearing will be conducted in an informal manner, in the discretion of the impartial hearing officer. Strict rules of evidence do not apply. Both parties will have the right to present written and/or oral testimony and arguments; the right to call and question witnesses in support of their position; the right to examine records and documents relevant to the issues; and the right to be represented. The hearing will be recorded electronically or by a court reporter.

6. **Decision:** Not later than 60 days after the filing of the grievance or complaint, the hearing officer shall mail a written decision to both parties by first class mail. The hearing officer's decision shall contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and issues related to the alleged violation;
- A statement of the facts as determined and adjudicated by the hearing officer;
- The hearing officer's decision and the reasons for the decision;
- A statement of corrective action or remedies for violations, if any, to be taken; and
- Notice of the right of either party to request a review of the decision by the State Review Panel within 10 days of the receipt of the decision.

7. **Appeal:** If a complainant does not receive a decision from the hearing officer 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, within 10 days of receipt of the hearing officer's decision, to:

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

STATE-LEVEL GRIEVANCE AND COMPLAINT PROCEDURES

Title 20 CFR Section 683.600(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 local workforce development area (LWDA) level, remanding grievances and complaints related to the local WIOA Title I programs to the LWDA grievance process, and affording an opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

1. State-Level Informal Resolution and Hearing Procedures

All complaints of non-criminal violations of the requirements of WIOA by the State, or complaints by individuals or interested parties affected by the statewide workforce investment program shall be filed in writing with the Chief of the Compliance Review Division (CRD). All requests for State hearings shall include the same basic elements necessary for local-level hearings. These are:

- a. Full name, telephone number, and mailing address of the complainant;
- b. Full name, telephone number, and mailing address of the respondent;
- c. A clear and concise statement of the facts and dates describing the alleged violation;
- d. The provisions of the WIOA, the WIOA regulations, grant, or other agreements under the WIOA, believed to have been violated;
- e. 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
- f. The remedy sought by the complainant.

2. Appeals of LWDA Decisions or Requests for EDD Review

- a. A complainant may file a request for review with EDD if no decision has been issued at the LWDA level within the 60-day time limit or if there has been an incident of restraint, coercion or reprisal as the result of filing a grievance or complaint. A complainant may file an appeal if the LWDA has issued an adverse decision. The request for an EDD review or appeal shall be filed or postmarked (if mailed) within 10 days from the date on which the complainant received an adverse decision from LWDA or 15 days from:
 - The date on which a complainant should have received a decision regarding a locally filed complaint, which is defined as five days from the date the decision was due, or
 - The date on which an instance of restraint, coercion or reprisal was alleged to have occurred as a result of filing the complaint.
- b. All requests for review or appeals shall include the following:
 - The full name, telephone number, and mailing address of the complainant;
 - The full name, telephone number, and mailing address of the LWDA;
 - A statement of the basis of the request or appeal; and
 - Copies of relevant documents, such as the complaint filed at the LWDA and the local decision, if any.
- c. If an evidentiary hearing was held at the LWDA level, the EDD shall request the record of the hearing from the LWDA and shall review the record without scheduling an additional hearing. If an evidentiary hearing was not held at the LWDA level, the EDD shall instruct

the LWDA to hold a hearing within 30 days of receipt of the appeal or request for hearing, schedule an evidentiary hearing before a hearing officer. The Chief of CRD shall notify the concerned parties and the LWDA by first class mail, certified with a return receipt, of the following information at least 10 days before a scheduled hearing:

- The date of the notice, name of the complainant, and the name of the party against whom the complaint is filed.
- The date, time, and place of the hearing before a hearing officer.
- A statement of the alleged violations. This statement shall accurately reflect the content of the complaint as submitted by the complainant.
- The name, address, and telephone number of the contact person issuing the notice.

3. Hearing

- a. The EDD hearing shall be conducted in an informal manner with strict rules of evidence not being applicable. Both parties shall have the right to present written and/or oral testimony under oath and arguments; the right to call and question witnesses; the right to request and examine records and documents relevant to the issues, and the right to be represented. The hearing shall be recorded electronically or by a court reporter.
- b. The EDD hearing officer shall follow the procedures set forth in Title 22, California Code of Regulations Section 5050 – 5070, except that references to the “administrative law judge” or “ALJ” shall mean “hearing officer.”

4. EDD State Review Panel

- a. Following completion of the EDD hearing, the EDD hearing officer shall make a written recommendation to the State Review Panel. The hearing officer’s recommendation shall contain the following information:
 - The names of the parties involved;
 - A statement of the alleged violation(s) and issues related to the alleged violation;
 - A statement of the facts;
 - The EDD hearing officer’s decision and the reasons for the decision; and
 - A statement of the corrective action, if any, to be taken.
- b. The State Review Panel shall not conduct a new evidentiary hearing but shall review the record established by either the LWDA hearing or the EDD hearing. The State Review Panel shall issue a decision on the basis of the information contained in the record. The State Review Panel may accept, reject, or modify the EDD hearing officer’s recommendation or the decision of the LWDA, and shall issue a written decision to the concerned parties within 60 days of receipt by the EDD of the request for hearing or review.
- c. The State Review Panel shall mail a written decision to both the complainant and the

respondent by certified mail. The decision shall contain the following information:

- The names of the parties involved;
- A statement of the alleged violation(s) and issues related to the alleged violation;
- A statement of the facts;
- The State Review Panel’s decision and the reasons for the decision;
- A statement of the corrective action, if any, to be taken; and
- A notice of the right of either party to file an appeal to the Secretary of Labor.

5. Referral of Local Grievances or Complaints

Grievances or complaints filed directly with the State related to the local WIOA programs will be remanded to the FWDB to be resolved in accordance with this policy.

6. Remedies

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

- Suspension or termination of payments under WIOA Title I;
- Prohibition of placement of a participant with an employer that has violated any requirement under WIOA Title I;
- Reinstatement, where applicable, of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
- Where appropriate, equitable relief.

b. Nothing in Section III, paragraph 1 shall be construed to prohibit a complainant from pursuing a remedy authorized under another federal, State, or local law for a violation of WIOA Title I.

7. **Federal-Level Appeal Process** If the State Review Panel has issued an adverse decision regarding a grievance or complaint or has not issued a decision within the required 60-day time limit, the complainant can file an appeal to the Secretary of Labor. The appeal must be filed with the Secretary of Labor no later than 120 days of the filing of the grievance or complaint with the State, or the filing of an appeal of a local grievance or complaint with the State.

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

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

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

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

REFERENCES

- WIOA (Public Law 112-128) Section 181 (c)
- Title 20 CFR “WIOA Final Rule” Sections 683.600 and 683.610
- Title 29 CFR ”Labor” Section 38.9 • Title 22 CCR Division 1, Subdivision 2, Chapter 2, Sections 5050 – 5070
- Workforce Services Directive WSD18-05, “WIOA Grievance and Complaint Resolution Procedures” (September 4, 2018)

Attachment A: Client Acknowledgement Regarding Grievance and Complaint Policy