

Monroe County/Rochester Workforce Development Board

WIOA Policy 105

DATE: June 19, 2018
REVISED: N/A
SUBJECT: Grievances and Complaints

I. Purpose

The Workforce Innovation and Opportunity Act (WIOA) and the WIOA Final Rule require the establishment of a grievance and complaint procedure by each Local Workforce Development Area under Title I of the Act. The information must be provided to participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers. The procedure must also 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 to the grievance so provides. The purpose of this policy is to ensure that grievances and complaints are resolved promptly and that complainants are advised of all steps taken to resolve the complaint.

II. Guidelines and Definitions

A. Types of Grievances and Complaints: This policy covers several different types of grievances and complaints as outlined below. Throughout this policy, the terms “grievance” and “complaint” are used interchangeably.

1. WIOA-Related. This type of grievance or complaint is a statement, filed in writing, either electronically or in hard copy, by a WIOA participant, staff member, or other interested party alleging that the Governor, Local Area, or other direct or indirect recipient of WIOA Title I funds has violated Title I of the WIOA law, the Final Rule, or a WIOA grant or agreement. It does not include complaints of discrimination or criminal activity. The process for handling WIOA-related grievances is described in Section III, below.

2. Discrimination. This type of grievance or complaint is a statement, filed in writing, either electronically or in hard copy, by any person or a person’s representative, alleging that a person, or any specific class of individuals, has been or is being discriminated against on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in any WIOA Title I-financially assisted program or activity as prohibited by WIOA or the WIOA Sec. 188 Final Rule. The process for handling Discrimination complaints is described in Section IV, below.

3. Criminal. This type of complaint is a statement containing information involving criminal fraud, waste, abuse, or other criminal activity in connection with programs or services receiving either WIOA Title I or State-authorized workforce development funding. The process for handling Criminal complaints is described in Section V, below.

4. Non WIOA-Related. This type of grievance or complaint includes any complaint alleging a violation of a law or policy not covered above. The process for handling non WIOA-related complaints is described in Section VI, below.

B. Definition of “Interested Party”: For purposes of filing a WIOA-related grievance or complaint, an interested party includes any applicant for WIOA Title I services, any WIOA Title I participant, staff member, subrecipient, vendor, one-stop operator, service provider (including providers of either career or training services), LWDB member, chief elected official, employer, labor union, collective bargaining unit, or any other person, agency, or organization with an interest in the delivery or receipt of WIOA Title I services.

III. WIOA-Related Grievance Process

WIOA-related grievances or complaints must be made within one year of the alleged occurrence. This process conforms to New York State Department of Labor’s Workforce Development System TA 18-4, “Processing Non-Criminal Complaints/Grievances under Title I of the Workforce Innovation and Opportunity Act (WIOA)”.

A. Complaint Process. Applicants and participants must be informed of the complaint resolution process and be provided a written copy of the complaint procedure at intake. Complaints are to be resolved at the lowest level possible: i.e., the level closest to the reason for the complaint. The complainant should first discuss the issue with the staff person with whom they have been working within five (5) working days of occurrence. The complainant must be informed of the WIOA complaint system and their rights within it.

The complainant may submit their written complaint, either electronically or in hard copy, to the one-stop/service provider’s designated Program Complaint Resolution Officer with a copy to the Local Area Grievance Officer. Complainants will receive complaint information and, if needed, assistance filing the complaint from either the Program Complaint Resolution Officer or an appropriately trained staff member designated by the one-stop/service provider. The Program Complaint Resolution Officer or other designated staff member must make reasonable efforts to assure that such information and assistance is understood by complainants, including youth and those who are limited-English-speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

The written grievance should include the following information:

1. The complainant’s full name, address, phone number, and any alternate contact information, such as an e-mail address. It is permissible for two or more complainants to file a joint grievance.
2. The staff person(s) and organization(s) involved in the grievance.

3. The reason(s) for the grievance and facts related to the grievance, including the date of first occurrence and events or conditions which constitute the grievance.
4. A statement of redress or resolution sought.
5. The result of any conversation with the staff person with whom they have been working, as referenced in the paragraph above.
6. Hard copy grievances must be signed and dated by the complainant. Electronic grievances will be considered to be signed and dated if they include the complainant's full name and address.

The identity of the complainant(s) and any people who furnish information to, or are assisting in, an investigation of a complaint should be kept confidential to the maximum extent possible, consistent with applicable law and fairness in handling the complaint.

Employers may operate their own grievance system or may utilize the WIOA complaint resolution procedure. Employers shall inform participants of the grievance procedure which participants are to follow. Employer grievance systems shall provide for, upon complainant request, a review of an employer's decision by the Local Area and the Governor. Employers opting to use their own grievance system must provide copies of the procedures to the Local Area for review and comment. The review will ensure that WIOA guidelines and requirements are not compromised.

When a WIOA-related complaint is filed and this complaint is also a violation of another law or collective bargaining agreement, the grievance procedures of that law or agreement may be used instead of, or in addition to the WIOA Complaint Resolution procedure. The Local Area Grievance Officer shall see that the complainant is informed of the status of the complaint. The complainant maintains the right to a hearing.

B. Resolution. If the written, signed complaint includes enough information for the Program Complaint Resolution Officer to initiate an investigation, the document shall be treated as if it were a properly completed grievance form filed in person by the complainant. The Program Complaint Resolution Officer shall send an acknowledgement to the complainant and begin to investigate the complaint. If the complainant has not provided sufficient information to investigate the complaint, the Program Complaint Resolution Officer shall request additional information from the complainant. Throughout the process, the Program Complaint Resolution Officer must provide the Local Area Grievance Officer with sufficient information to document the complaint in the WIOA-Related Complaint Log.

1. Informal Resolution. The Program Complaint Resolution Officer must document all steps taken to resolve the complaint. The methods used in the complaint investigation may include, but are not limited to, analyzing the complaint and available background material, interviewing, examining records, obtaining documents, obtaining written statements, observing and meeting with the complainant and respondent, separately and/or both at the same time. The objective of these efforts is a settlement between the complainant and the respondent.

2. Complaint Resolution. This occurs when at least one of the following is true:

- Complainant indicates satisfaction with the outcome;

- Complainant chooses not to elevate the complaint to the next level of review;
- Complainant (or complainant's authorized representative) fails to respond to a written request by the Program Complaint Resolution Officer or Local Area Grievance Officer within 10 calendar days; or
- A final determination has been made by the responsible agency on a referred WIOA-related complaint.

C. Hearing. If the complaint is not resolved within 29 calendar days, then on the 30th calendar day, the complainant shall have a previously scheduled hearing. If the 30th calendar day falls on a weekend or holiday, then the hearing shall be scheduled on the next business day. If the Local Level Hearing Officer is not available on the 30th calendar day, the hearing may be scheduled after the 30th calendar day but no later than the 45th calendar day after the filing of the complaint. If circumstances warrant it, a hearing may be scheduled at any time within 30 days of a filed complaint. The complainant shall receive written notice of the date, time and place of the hearing, seven (7) days prior to the hearing date. The hearing may only be cancelled or postponed beyond the 30 days at the request of the complainant. A request for cancellation shall be transmitted to the Local Level Hearing Officer through the Program Complaint Resolution Officer with the complainant's written and signed attestation that the complaint has been resolved or withdrawn.

1. Hearing Notice. The notice of hearing should include:

- The date, time, place, and purpose of the hearing;
- A statement of the law and regulations under which the hearing is to be held;
- A reference to the particular sections of the statutes or rules involved, where possible;
- A statement of the rights of the complainant, including the right to be represented by an attorney or other designated representative(s), the right, within the limitation of the Freedom of Information Act, to access relevant records and documents that the program and/or Local Area maintains, and the right to an opportunity during the hearing to present evidence relevant to the complaint, call witnesses, and examine and cross-examine other parties and their witnesses; and
- A short and plain statement of the matters asserted. It shall be sent to the party requesting the hearing and to all other parties.

Whenever feasible, the notice shall be sent at least seven (7) days prior to the date of the hearing.

2. Hearing Guidelines:

- The hearing shall be recorded. The audio needs to be of such a quality that a transcript can be made from it.
- The complainant may be represented by an attorney or other designated representative(s).
- To the extent possible, consistent with a fair determination of the issues, the identity of any person who has furnished information related to an investigation of a WIOA-related complaint shall be kept confidential.

- Within the limitation of the Freedom of Information Act, the complainant has a right of access to relevant records and documents that the program and/or Local Area maintains.
- The complainant and respondent have the right to an opportunity to present evidence relevant to the complaint, to call witnesses, and examine and cross-examine other parties and their witnesses.

D. Decision. A formal decision should contain the following elements.

1. Name of complainant(s)
2. Name and organization of respondent(s)
3. A statement of the law and regulations under which the hearing was to be held
4. Date of hearing
5. List of attendees
6. Statement of issue(s)
7. Finding of facts
8. Conclusions of law
9. Opinion and reason for decision
8. Instructions on how to request a State-level review of the decision
10. Name and signature of hearing officer
11. Date signed

If no decision is rendered within 60 days of the filing of a signed, written complaint, including instances where a hearing was never scheduled for an unresolved complaint, the complainant may request a State-level review of the complaint at any time between the 61st and 75th day after the complaint was filed. A request for State-level review must contain the same elements required for a local area complaint. The request must be submitted by certified mail, return receipt requested, to State Level Grievance Officer, New York State Department of Labor, W. Averell Harriman State Office Building Campus, Building 12, Room 440, Albany, NY 12240-0001.

The complainant also has the right to request a State-level review of an adverse decision issued by the Local Level Hearing Officer. Such a request must be filed with the State Level Grievance Officer within ten (10) calendar days of receipt of the adverse decision. Such requests must allege either procedural violations or errors in interpreting or applying the law at the lower-level hearing.

Complainants either not given a hearing or who did not receive a hearing decision within sixty (60) calendar days of requesting State-level review, and which were not remanded back to the local level, have the right to request a Federal-level review. Such a request must be filed within fifteen (15) calendar days from the date on which the complainant should have received a written decision.

Complainants in receipt of a written State-level hearing decision, have the right to request a Federal-level review. Such a request must be filed within ten (10) calendar days from the date on which Complainant received the written hearing decision. Such requests must allege either procedural violations or errors in interpreting or applying the

law at the lower-level hearing. Federal Level Appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party. The address of the ETA Regional Administrator is U.S. Department of Labor, Employment and Training Administration, 25 New Sudbury St., John F. Kennedy Federal Building, Room E-350, Boston, MA 02203.

E. Local Roles.

1. Program Complaint Resolution Officer. Each one-stop/service provider under WIOA Title I shall designate a staff member to be the Program Complaint Resolution Officer to serve as the first point of contact for any aggrieved party.

2. Local Area Grievance Officer. The Executive Director of the Local Workforce Development Board shall designate a Board staff member to be the Local Area Grievance Officer, which may be the Technical Assistance and Training Assistant or another qualified staff member. The duties of the Local Area Grievance Officer are as follows:

- Advise and assist all Program Complaint Resolution Officers.
- Monitor each one-stop/service provider's implementation of this policy.
- Record all WIOA-related complaints in the WIOA-Related Complaint Log and separately file and safeguard all documents pertaining to individual WIOA-related complaints.
- Log and refer out non WIOA-related complaints as described in Section VI, below.
- Identify need, and provide technical assistance in complaint resolution.
- Make arrangements with Local Level Hearing Officer(s) for all WIOA complaint hearings in the local area.
- When a complaint is filed against the local area, rather than a one-stop/service provider, assume the role of the Program Complaint Resolution Officer for the local area.

3. Local Level Hearing Officer. The Executive Director of the Local Workforce Development Board shall designate a Board staff member to be the Local Level Hearing Officer, which may be the Technical Assistance and Training Manager or another qualified manager. The duties of the Local Level Hearing Officer are as follows:

- Regulate the course of the hearing.
- Assure that all relevant issues are considered.
- Rule on the introduction of evidence and testimony.
- Take any other action, consistent with due process, that is necessary to ensure an orderly, impartial, and fair hearing.
- Attempt to resolve the dispute by conciliation at any time prior to the conclusion of the hearing.
- Cause the hearing to be recorded.

- Prepare and mail the written decision to the complainant(s), respondent(s), Program Complaint Resolution Officer, and Local Area Grievance Officer in accordance with the timeframes specified in this policy.

No person may act as a Complaint Resolution Officer and Hearing Officer on the same complaint.

IV. Discrimination Complaint Process

Discrimination complaints must be filed within 180 days of the alleged discrimination or retaliation.

A. Complaint Process. The Equal Opportunity Notice required by the WIOA Sec. 188 Final Rule must be posted prominently at all service locations and provided to each applicant, participant, employee, and applicant for employment. The notice must be provided to participants in appropriate languages other than English as required in the Final Rule, Section 38.9.

A person or the person's representative may file a complaint with either the Local EO Officer or the Director of U.S. Department of Labor's Civil Rights Center (CRC).

The complainant must submit their complaint in writing, either electronically or in hard copy. The written complaint must include the following information:

1. The complainant's name, mailing address, and if available, email address (or another means of contacting the complainant).
2. The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).
3. A description of the complainant's allegations. This description must include enough detail to allow the CRC Director or the Local EO Officer, as applicable, to decide whether:
 - CRC or the Local EO Officer, as applicable, has jurisdiction over the complaint;
 - The complaint was filed in time; and
 - The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA or the Sec. 188 Final Rule.
4. The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the Local EO Officer or from CRC. The forms are available electronically on CRC's Web site, and in hard copy via postal mail upon request.

The identity of the complainant(s) and any people who furnish information to, or are assisting in, an investigation of a complaint should be kept confidential to the maximum extent possible, consistent with applicable law and fairness in handling the complaint.

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

B. Resolution. If the complaint is submitted to the Local EO Officer, the EO Officer must send an acknowledgement to the complainant and shall begin to investigate the complaint. If the complainant has not provided sufficient information to investigate the complaint, the Local EO Officer shall request additional information from the complainant.

1. The written acknowledgement must be sent to the complainant within 5 days of receipt of the complaint and must contain the following information:

- Acknowledgment that the complaint has been received;
- Notice that the complainant has the right to be represented in the complaint process;
- Notice of rights contained in the WIOA Sec. 188 Final Rule, Section 38.35;
- Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in the WIOA Sec. 188 Final Rule.

2. Within 15 days of receipt of the complaint, the Local EO Officer must send one of the following notifications to the complainant:

- **Notification of no jurisdiction:** If the Local EO Officer determines that they do not have jurisdiction over a complaint, a notice will be sent to the complainant so indicating and will include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the CRC Director within 30 days of receipt of the notification. This notice will be sent to the complainant and respondent by certified mail.
- **Statement of issues:** If the Local EO Officer determines that they do have jurisdiction over a complaint, the statement of issues will be sent. This letter shall advise the parties of the list of issues raised in the complaint and of the right to be represented in the complaint process. In addition, the complainant and respondent will be advised of which issues will be accepted for investigation and the reason for each issue not accepted. The complainant will be notified that he or she has the option of resolving his or her complaint through a fact-finding/investigation process or alternative dispute resolution. The statement of issues will be sent to the complainant and respondent by certified mail. The Local EO Officer will also notify the complainant and respondent of the prohibition against retaliation and intimidation.

3. Informal Resolution. The Local EO Officer may meet with the complainant informally to discuss and clarify the issues. During this process, the EO Officer may, in appropriate cases, offer a resolution of the matter, provided the Local EO Officer files a Notice of Final Action. If the complainant is not satisfied with the informal resolution, the complainant may proceed with a full investigation or request alternative dispute resolution.

C. Resolution of Complaints. The complainant has the option of resolving his or her complaint through a full fact-finding/investigation process or alternative dispute resolution (ADR). If the complainant chooses the alternative dispute resolution option, he or she must notify the Local EO Officer within 10 days of receipt of the Statement of Issues.

1. Fact-Finding/Investigation Process. If the complainant chooses the full fact-finding/investigation process, the Local EO Officer will conduct a full review of the matter, including giving the complainant and the respondent the opportunity to respond to all the evidence presented.

2. Alternative Dispute Resolution Process. If the complainant chooses the ADR method, the Local EO Officer will refer the matter to an impartial mediator approved by the Local EO Officer. The complainant will be advised that mediation is voluntary. Both parties will be advised that they must participate in the mediation in good faith but will not be required to reach an agreement.

- **Notice of Mediation Conference.** Written confirmation of the mediation conference will be sent to each party within 10 days of the date of mediation. The notice will include the date, time, and location of the mediation conference and a statement of the issues to be mediated. If complainant and respondent are represented, they are responsible for providing that person with notice of the mediation.
- **Confidentiality.** Mediation sessions will be closed to any individual other than the parties and their representatives, except by consent of both the parties and the mediator. Communication and information disclosed during the mediation is privileged and confidential and shall not be disclosed to a third party, except for purpose of implementation or enforcement, or by written agreement of both parties. During the mediation process, notes may be taken. However, once the final settlement agreement has been reached or the parties are unable to reach an agreement, all notes must be turned over to the mediator for disposal.
- **Final Agreement.** The mediator will provide a copy of the final agreement or notice of failure to reach an agreement to the complainant, respondent, and the Local EO Officer within 60 days from the date of the complainant's election to participate in ADR.
- **Failure to Reach Agreement.** If the parties fail to reach an agreement, the Local EO Officer will submit a Notice of Final Action to the parties within 5 days of receipt of the notification from the mediator of the result of the mediation. The Notice of Final Action shall provide a copy of the agreement and indicate that the parties failed to reach an agreement on some or all of the issues, as applicable. The Notice shall also advise the complainant of his or her right to file a complaint with the CRC Director within 30 days.
- **Breach of Agreement.** A party to any agreement reached under ADR may file a complaint with the CRC Director in the event the agreement is breached. The non-breaching party may file a complaint with the CRC Director within 30 days from the date on which the non-breaching party learns of the breach.

- **Mediation Files.** The Local EO Officer is responsible for maintaining a record of the cases submitted for mediation and a copy of each mediation agreement.
- **Alternative Fact-finding/Investigation Method.** The Local EO Officer may, at his or her discretion, offer complainants the alternative of having the complaint heard on the record before an impartial administrative law judge within sixty days of the complainants' election for a full fact-finding/investigation.

D. Notice of Final Action. Upon completion of his or her investigation and review of the complaint, the Local EO Officer must file a Notice of Final Action within 90 days of receipt of the complaint. The Notice must contain the following information:

1. For each issue raised in the complaint, a statement of either the Local EO Officer's decision on the issue and an explanation of the reasons underlying the decision *or* a description of the way the parties resolved the issue.
2. Notice that the complainant has a right to file a complaint with the CRC Director within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the Local EO Officer's final action on the complaint.

The Notice of Final Action must be mailed to the complainant and respondent by certified mail.

If the complainant has not received a Notice of Final Action within ninety days of filing the complaint, the complainant or his or her representative may, within 30 days of the expiration of the 90-day period, file a complaint with the CRC Director provided, however, that the complaint must be filed with the CRC Director within 120 days of the date on which the complaint was filed with the Local EO Officer.

E. The Local Equal Opportunity (EO) Officer. The Executive Director of the Local Workforce Development Board shall designate a Board staff member to be the Local EO Officer, which may be the Technical Assistance and Training Manager or another qualified manager. In addition to the responsibilities listed above, the Local EO Officer will record all discrimination complaints in the Discrimination Complaint Log and separately file and safeguard all documents pertaining to individual discrimination complaints

V. Criminal Complaint Process

According to New York State Workforce Development System Technical Advisory #12-15, all grant recipients that receive funds through USDOL/ETA and/or NYSDOL must document and report allegations, suspicions and complaints involving possible fraud, program abuse and criminal misconduct to NYSDOL. NYSDOL requires documentation through completion and submission of an Incident Report within three (3) business days from the time of discovery, suspicion or receipt of an allegation or complaint.

Additionally, situations involving imminent health or safety concerns, or the imminent loss of funds exceeding an amount larger than \$50,000 are considered emergencies and must immediately be reported to NYSDOL. In the instance of an emergency, the Incident Report must be submitted to

NYSDOL no later than one (1) business day from the time of discovery or receipt of an allegation or complaint.

Any staff member needing assistance with the filing of an Incident Report should contact the Technical Assistance and Training Manager. Additionally, when Incident Reports are submitted, a copy should be provided to the Technical Assistance and Training Manager.

VI. Non WIOA-Related Complaint Process

Non WIOA-related complaints may include Employment Services (ES) Related Complaints, Employment-Related Law Complaints, Migrant and Seasonal Farm Worker (MSFW) Complaints, including Apparent Violations, and complaints handled by other federal, state, or local agencies. All non WIOA-related complaints should be referred to an ES Complaint Specialist, the State Monitor Advocate, or the appropriate enforcement agency. The Local Area Grievance Officer should also be informed of the complaint and should log the complaint on the WIOA-Related Complaint Log as a non WIOA-related complaint. Although the referral will be recorded on the complaint log, follow up is not required on non WIOA-related complaints.

WIOA customer service complaints that do not constitute a violation of Title I of the WIOA law, the Final Rule, or a WIOA grant or agreement will also be handled as non WIOA-related complaints. They will be referred to the appropriate program manager for resolution and logged on the WIOA-Related Complaint Log as a non WIOA-related complaint.

VII. Effective Date

This policy is effective immediately upon approval by the Workforce Development Board.

VIII. Revision

RochesterWorks, Inc. has the authority to make technical revisions to this policy. Technical revisions may be made to better align this policy with federal or state laws, statutes, regulations, or policy guidance; to better align this policy with other local policies; to respond to changes in the WIOA budget that impact this policy; or to revise references to source documents cited in this policy. Any revision to this policy that could have a substantial impact on participants must be approved by the Workforce Development Board. The Executive Director has the authority to temporarily approve policy changes until the next Workforce Development Board meeting.

IX. Questions

Questions on this policy may be directed to Lee Koslow, Technical Assistance and Training Manager, RochesterWorks Inc., (585) 258-3500, x-3516 or Lkoslow@rochesterworks.org.

Date Approved by Workforce Development Board: June 19, 2018