

Interim Policy on Grievances or Complaints of a Nondiscriminatory Nature

Reference:

The Workforce Innovation and Opportunity Act (WIOA), Section 181; WIOA Notice of Proposed Rulemaking, 20 CFR §§ 658.411, 683.600, 683.610

Background:

The Workforce Innovation and Opportunity Act (WIOA) mandates that each state and local area receiving an allotment under Title I establish and maintain a procedure for grievances or complaints alleging violations of the requirements of Title I. Such procedure shall include an opportunity for a hearing and be completed within 60 days after the filing of the grievance or complaint.¹

Action:

After a 10 day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox: ndol.wioa_policy@nebraska.gov.

Local areas need to establish a policy on grievances or complaints of a non-discriminatory nature addressing the provisions identified in this policy as well as ensure their local WIOA Plan addresses the requirements set forth in this policy.

Policy:

The following provides standardized procedures for the submission and processing of grievances and complaints that allege:

- Violations of WIOA, regulations or agreements under the Act and other non-criminal complaints.
- Violations of the labor standards provisions at Section 181(b) of WIOA, i.e., violations involving activities that impact wages of employees, displacement, working conditions, and employment conditions.
- Violations of the relocation provisions in Section 181(d).

Each state, local area, and direct recipient must:

- Provide information about the content of the grievance and complaint procedures to participants and other interested parties affected by the local Workforce Development System, including One-Stop partners and service providers;
- Require that every entity to which it awards WIOA Title I funds provides such information to participants receiving Title I services from such entities;
- Make reasonable efforts to ensure that the grievance and complaint procedures information is understood by affected participants and other individuals, including youth

¹ WIOA Section 181(c)(1)

and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR § 38.35;² and

- Respond to written complaints through written acknowledgment of receipt and explanation of status and next steps. If an oral complaint is received, an informal attempt at resolution can take place prior to the filing of a written complaint. If resolution does not result, the complaint must be put in writing. Complaints must be legible, signed by the complainant or complainant's authorized representative, and dated. In the event the complainant is unable to provide a written statement, an alternative method of obtaining written documentation from the complainant shall be pursued, which may include assistance by agency staff or local service provider.

These procedures will be available to all WIOA staff, applicants, participants, One-Stop partners, service providers, sub-recipients, contractors, labor unions, community based organizations or other interested parties seeking to do business with NDOL. Dissemination will be made through the Internet, NDOL Intranet, State Policy Manual, grant awards, and upon request. These procedures provide for prompt and equitable resolution of complaints.

Who May File

A complaint may be filed by any individual or organization, including but not limited to:

- program participants
- contractors
- WIOA staff
- local area staff
- One-Stop partner staff
- applicants for program participation
- labor unions
- community based organizations

The identity of the complainant or any other person who has furnished information or assisted in an investigation will be kept confidential to the maximum extent possible, consistent with a fair determination of the issues.³

No person, organization or agency may retaliate against any individual that files a complaint or testifies during complaint proceedings. Any individual may file a complaint without fear of jeopardizing their position, opportunity for advancement, or salary increase, and without fear of the denial of rights and benefits provided by the Act, regulations, or state and local laws.

Time Frames

Except for complaints alleging fraud or criminal activity, complaints shall be made within one hundred eighty (180) days of the alleged occurrence.

This policy provides that complaints submitted under this procedure will be either resolved or a decision issued within sixty (60) days.

² 20 CFR § 683.600(b)

³ 20 CFR § 658.411

Submission Requirements

Grievance procedures shall be established at the local area level for resolving any complaint alleging the violation of the Act, regulations or other agreements under the Act. The procedures will explain the process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Development System, including One-Stop partners and service providers.

The local area procedures must provide an opportunity for an informal resolution and a hearing. Any hearing that may be required shall be completed within sixty (60) days of the filing of the grievance or complaint. The local area procedures may include a requirement that the complainant pursue an informal resolution with a local area service provider if the complaint or grievance involves an action or decision of the service provider or one of its employees. If mutually satisfactory resolution results from an informal process, the staff member should include documentation in the file stating the issues and resolution. The matter would then be considered closed.

The local area process must allow an individual alleging a labor standards violation the opportunity to submit the grievance to binding arbitration, if a collective bargaining agreement covering the parties to the grievance so provides.

If the grievance or complaint is not resolved at the local level, then there must be an opportunity for a local level appeal according to the procedures below and submitted to the state at:

Nebraska Department of Labor
Office of Employment and Training
550 S. 16th Street
Lincoln, Nebraska 68209

State Appeal/Review Process

Appeal of a Local Area Grievance or Complaint

If the complainant does not receive a determination of a complaint filed at the local level within sixty (60) days of filing or if either party is dissatisfied with the local hearing decision, an appeal may be made to the state. The request for review shall be filed within ten (10) days of receipt of the adverse determination or, if no determination is made within sixty (60) days, then at any time prior to the receipt of a determination from the local level. Staff will review and/or investigate, provide opportunity for a hearing, and the hearing officer will issue a decision within sixty days of the appeal to the state. A complainant may withdraw his/her appeal at any time prior to the hearing. The decision is final unless appealed to the Secretary.

Statewide Workforce Development System Review Process

Grievances or complaints from participants and other interested parties affected by Statewide Workforce Development programs may be submitted at:

Nebraska Department of Labor
Office of Employment and Training
550 S. 16th Street
Lincoln, Nebraska 68509

If it is determined that the complaint is directly related to the local Workforce Innovation and Opportunity Act Program, then the complaint/grievance will be remanded to the local area grievance process. Local level procedures shall be exhausted before the complaint may be addressed at the state level. The local area shall either resolve the complaint informally or have a hearing and issue a final local decision within sixty (60) days.

Elements to Include in the Complaint Requesting Appeal of Local Area Decision or State Review

Complaints must:

- Be legible, signed by the complainant or the complainant's authorized representative, and dated. The date of receipt of the written complaint by the appropriate authority [local area, state, or direct recipient], triggers the clock for counting days of action taken;
- Pertain to a single subject, situation, or set of facts.
- Clearly indicate the complainant's name, address and phone number. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and phone number of the representative must also appear in the complaint;
- State the name of the party or parties complained against and, if known to the complainant, the address and phone number of the party or parties complained against;
- Contain clear and concise statements of the facts including pertinent dates constituting alleged violations;
- Cite the provisions of the Act, regulations or grant or other agreements under the Act believed to have been violated, if known; and
- State the relief or remedial action(s) sought.

Copies of documents supporting or referred to in the complaint must be attached to the complaint.

Investigation and Initial Determination

The Office of Employment and Training will review and/or investigate the alleged incident and issue a written initial determination within ten (10) days.

The Initial Determination will include:

- Statement of Issues;
- Initial Determination;
- Reason for Determination; and
- Opportunity for the complainant to request a hearing if not satisfied with the determination.

Hearing

If the complainant is not satisfied with the Initial Determination, he/she may request a hearing before the Commissioner of Labor or an appointed representative. The request for hearing will be filed within seven (7) days of receipt of the Initial Determination. The hearing will be conducted in an informal manner and formal or technical rules of evidence will not apply.

If a hearing is requested, the Office of Employment and Training will:

- Arrange for a hearing in the complainant's locale if possible;
- Ensure the hearing is held within thirty (30) days of filing; and
- Prepare a written notice of hearing and forward to all affected/interested parties.

The written notice of hearing will include:

- The identity of the hearing officer; the date, time, and place of hearing; how the hearing will be conducted; and the issues to be decided;
- Notification of the opportunity to withdraw the request before the hearing. This request must be received in writing before the hearing date;
- Notification of the opportunity to bring witnesses and/or documentary evidence;
- Notification of the opportunity to be represented by an attorney or other representative selected by the complainant;
- Notification of the opportunity to have records or documents relevant to the issues to be decided at the hearing produced by their custodian;
- Notification of the opportunity to question any witness or parties; and
- Notification of the opportunity to amend the complaint prior to the hearing.

The decision of the hearing officer will be rendered, in writing, within ten (10) days from the date of hearing. The decision will include:

- A statement of the issues presented at the hearing;
- The hearing officer's decision;
- The reason for the decision; and
- The recommended remedies to be applied.

Appeal to the Secretary of Labor

The Secretary of Labor shall investigate an allegation of a violation of the requirements of Title I if:

1. A decision relating to a Statewide Workforce Development program grievance or complaint has not been reached within sixty (60) days of receipt of the grievance or complaint or within sixty (60) days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or
2. A decision relating to such violation has been reached and the party to which such decision is adverse appeals such decision to the Secretary.⁴

⁴ WIOA Section 181(c)(2)

All appeals to the Secretary must be submitted by certified mail, return receipt requested, to:

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

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

Region V Administrator
U.S. Department of Labor
Employment and Training Administration
230 S. Dearborn Street
Chicago, Illinois 60604

Appeals made under (1) above must be filed within one hundred twenty (120) days of the filing of the grievance with the state, or the filing of the appeal of a local grievance with the state. Appeals made under (2) above must be filed within sixty (60) days of the receipt of the decision being appealed.⁵ All appeals should contain:

- The full name, phone number, and address of the person making the complaint;
- The full name and address of the respondent against whom the complaint is made;
- A clear concise statement of the facts, including pertinent dates, constituting the alleged violation;
- The provisions of the Act, regulations or grant or other agreements under the Act believed to have been violated; and
- A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any federal, state, or local authority and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case.

The Secretary is required to make a final determination relating to an appeal no later than 120 days after receiving such appeal.⁶

Remedies

Remedies that may be imposed through this grievance/complaint process for a violation of any requirement of Title I shall be limited to:

- Suspension or termination of payments under this title;
- Prohibition of placement of a participant with an employer that has violated any requirement under this title;
- Where applicable, reinstatement of an employee, payment of lost wages and benefits, and privileges of employment; and
- Where appropriate, to other equitable relief.⁷

⁵ 20 CFR § 683.610(c)

⁶ WIOA Section 181(c)(2)(B)

⁷ WIOA Section 181(c)(3)

Other Remedies

Nothing prohibits a grievant or complainant from pursuing a remedy authorized under another federal, state, or local law for a violation of Title I of WIOA.⁸

Violations of the Labor Standards Provisions at Section 181(b)

Complaints Related to Conditions of Employment

Employees of the local areas and sub-contractors shall submit and resolve complaints through local employer procedures.

Each recipient of WIOA funds which is an employer of WIOA participants shall continue to operate or establish and maintain a grievance procedure relating to the terms and conditions of employment.

Employers, including private for-profit employers of WIOA participants, may operate their own grievance system established by the state or the local area. Employers shall inform WIOA participants of the grievance procedure they are to follow when the participant begins employment.

A complainant may appeal/submit a complaint if any of the following conditions exist:

- The employing agency does not operate a complaint system;
- The employing agency operates a complaint system but the procedures are not followed;
or
- The complaint alleges a violation of federal or state rules and regulations.

Appeal to the Secretary of Labor

When the grievance alleges violation of Section 181(b) and the grievance procedure rights have been exhausted or the 60-day time period has elapsed without a decision, either party to such procedure may submit the grievance to the Secretary. The Secretary shall investigate the allegations and make a determination as to whether a violation under Section 181(b) has occurred.

If a modification or reversal of the decision issued pursuant to the recipient's grievance procedure is warranted, or the 60-day time period has elapsed without a decision, the Secretary may modify or reverse the decision, or issue a decision if no decision has been issued, after an opportunity for a hearing.

If the Secretary determines that the decision issued pursuant to the grievance procedure is appropriate, the determination shall become the final decision of the Secretary.

⁸ WIOA Section 181(c)(4)

Binding Arbitration

As an alternative to the above, a person alleging a violation of Section 181(b) may submit the grievance to a binding grievance procedure if a collective bargaining agreement covering the parties to the grievance so provides. However, binding arbitration decisions are not reviewable by the Secretary and the remedies available to the grievant are limited to those set forth in the Act.

Violations of the Relocation Provisions in Section 181(d) of the Act

When the grievance alleges violation of the relocation prohibitions in Section 181(d) of the Act, the grievance may be submitted to the Secretary for investigation to determine whether the state or local area is in compliance with the Act.

If the Secretary determines that a violation of the relocation prohibitions has occurred, either by a state or by an entity to which a state provided funds, the Secretary shall require the state to repay to the United States an amount equal to the amount expended in violation.⁹

Recordkeeping Requirements

Complaint records must be retained for a minimum of three years following resolution of the complaint. These records should be made available for review, as needed for compliance verification purposes.

Disclaimer:

This interim policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

⁹ WIOA 181(d)(3)