



COMPLAINT AND GREIVANCE
(Excludes Discrimination Complaints)

Workforce Investment Act Policies and Procedures

POLICY # W402

Effective Date: November 10, 2012

The WDC, grantees, sub recipients, contractors and sub contractors funded under the Workforce Investment Act (WIA), whether in whole or in part, must abide by the Workforce Investment Act of 1998, the WIA Regulations, all applicable Office of Management and Budget (OMB) Circulars, state requirements in laws and rules (Revised Code of Washington and Washington Administrative Code), Office of Financial Management (OFM) policies, and Washington State WIA Policies.

BACKGROUND:

This policy replaces adopts the updated State policy to include areas not covered in the previous policy and to improve the fact-finding and the complaint and grievance process.

PURPOSE

This policy provides guidance to the Workforce Development Council (WDC) of Spokane Area and its service providers (subrecipients / subcontractors) of the Workforce Investment Act (WIA) Title I grant funds in the development, maintenance, and implementation of local-level grievance and complaint procedures. These procedures cover complaints alleging noncriminal violations of the requirements of WIA in the operation of local WIA programs and activities. It also transmits policy governing WIA Title I related grievance and complaint procedures at the State level.

SCOPE AND JURISDICTION

This policy requires that the WDC of Spokane Area and its service providers of WIA Title I grant funds comply with the grievance and complaint provisions of WIA. This policy applies to programmatic grievances and complaints pursuant to WIA Section 181(c) and does not address the procedures for processing complaints alleging discrimination under WIA Section 188 and/or Federal Register Part II 29 CFR 37. Information and complaints involving allegations of fraud, abuse, or other criminal activity must be reported immediately to the Employment Security Department's Audit Resolution Team.

POLICY:

The state requires the WDC to have a comprehensive complaint policy and procedure. The WDC policy and procedure includes all the elements in Part II and Part III that pertain to Workforce Development Councils. (WIA Section 181(c)(1); Final Rules, Subpart F, Section 667.600).

- I. INTRODUCTION: A participant or other interested party may file three types of complaints or grievances: discrimination complaints, complaints against the program, and complaints against an employer.
 - Discrimination Complaints: These are covered in WIA Policy 3445.
 - Program Complaints: Program complaints of a general nature may be filed when a participant, applicant, or registrant feels they have been deprived of the benefits assured under the Act. These are complaints against the program and reflect potential violations of WIA and related regulations.

- Grievances Against An Employer: Grievances against an employer alleging a labor standards violation may be submitted to a binding arbitration procedure when the collective bargaining agreement so provides.

It is important to establish the difference between the types of complaints. A complaint cannot be processed as a program complaint and a discrimination complaint.

Complainants must have their complaints heard and an earnest attempt must be made to reach a resolution. Appeals to the state and, under some circumstances, to the Department of Labor can be made if any party to an action is not satisfied with the results of the local hearings.

II. RESPONSIBILITIES: Responsibilities of the State and the WDC of Spokane Area. (Final Rules, Section 667.600)

- A) [Section 667.600 (a & b)] The State and the WDC must:
- 1) Establish and maintain a procedure for managing grievances and complaints.
 - 2) Provide information about the content of the grievance and complaint procedure to participants and other interested parties affected by the local Workforce Investment System, including One-Stop partners and service providers.
 - 3) Provide information referred to in Section II.A.2. to participants receiving Title 1 funded services.
 - 4) Make reasonable efforts to assure that the information referred to in Section II.A.2. will be understood by the participants and other individuals. This includes youth and those who are limited-English speaking. These efforts must be in compliance with the language requirements of 29 CFR 37.35.
- B) [Section 667.600 (c)] The WDC must provide:
- 1) A process for dealing with grievances and complaints from participants and interested parties affected by the local Workforce Investment System. The system includes One-Stop partners and service providers.
 - 2) An opportunity for an informal resolution.
 - 3) An opportunity for a hearing. The hearing is to be completed within 60 days of the filing of the grievance or complaint.
 - 4) A process which allows an individual alleging a labor standards violation to submit a grievance to a binding arbitration procedure. Binding arbitration must be provided for in the collective bargaining agreement covering the parties to the grievance.
 - 5) An opportunity for a local level appeal to the state when: a) no decision is reached within 60 days; or b) either party is dissatisfied with the local hearing decision.
- C) [Section 667.600 (d)] The State must provide:
- 1) A process for dealing with grievances and complaints from participants and other interested parties affected by the Statewide
 - 2) A process for resolving appeals made under section B.5. (10%) Workforce Investment programs.
 - 3) A process for remanding WIA program grievances and complaints back to the Workforce Development Councils.
 - 4) An opportunity for an informal resolution.
 - 5) A hearing which is to be completed within 60 days of the filing of the grievance or complaint.
- D) [Section 667.600 (e)] The Direct Recipients must provide:
- 1) A process for dealing with grievances and complaints from participants and other interested parties affected by the Statewide Workforce Investment programs.
 - 2) An opportunity for an informal resolution.
 - 3) A hearing which is to be completed within 60 days of the filing of the grievance or complaint.

III. PROCEDURES:

A. General Principles and Requirements

These procedures will guide the receipt, hearing, and resolution of noncriminal grievances and complaints relating to WIA Title I grant programs and activities that are funded with WIA Title I grant monies provided to the State by DOL.

These procedures will be available for use by all individuals and entities; including WIA Title I grant participants, WDC staff, its service providers (sub contractors/ sub recipients), and other interested parties.

Local procedures include [a] process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties so provides. [Title 20 CFR Section 667.600(c)(3)].

Additionally, the WDC and its service providers of WIA Title I grant funds will make reasonable efforts to assure that information about the content of the grievance and complaint procedures will be understood by affected participants and individuals, including youth and those who are limited English-speaking individuals. Such efforts must comply with the language requirements of Title 29 CFR 37 Section 37.35.

At all levels of the grievance or complaint process, complainants have the right to be represented, at their own expense, by a person(s) of their choosing.

All grievances or complaints, amendments, and withdrawals that are not solved informally must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, or discrimination.

B. Grievance and Complaint Procedures

Pursuant to Title 20 CFR Sections 667.600, the State requires the WDC to establish procedures for resolving grievances and complaints alleging a violation of WIA Title I regulations, grants, or other agreements under WIA. The following outlines the procedures for resolving issues arising in connection with WIA Title I grant programs operated by each administrative entity for the WDC.

Any participant or other interested party adversely affected by a decision or action by the local workforce system, including decisions by One-Stop partners and service providers, has the right to file a grievance or complaint with the WDC.

Spokane Area Workforce Development Council
2000 N. Greene St, MS 2158
Spokane, WA 99217-5499
Attn: Dawn Karber
(509) 533-8471
dkarber@wdcspokane.com

1. **Notice to Affected Parties:** Initial and continuing notice of the local grievance and complaint procedures and instructions on how to file a complaint must be:
 - Made available to any interested parties and members of the public.
 - Made available to each participant.
 - A copy of a written description of the local grievance and complaint procedure shall include:
 - 1) Notification that the participant has the right to file a grievance or complaint at any time of the alleged violation;
 - 2) Instructions and timeline for filing a grievance or complaint; and
 - 3) Notification that the participant has the right to receive technical assistance. Such information shall be modified, as needed, whenever the procedures are changed.

Included in each participant's file. A copy of acknowledgement of receipt shall be signed by the participant.

The WDC has the responsibility to provide assistance to the complainants, including those grievances or complaints against the WDC. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents such as the WIA, regulations, local rules, contracts, etc., and providing clarifications and interpretations of relevant provisions. This requirement shall not be interpreted as requiring the WDC to violate rules of confidentiality.

2. **Filing of Grievance or Complaint:** The official filing date of the grievance or complaint is the date the written grievance or complaint is received by the WDC, its service providers, One-Stop partners, or subrecipients. The filing of the grievance or complaint will be considered a request for a hearing, and the WDC of Spokane shall issue a written decision within 60 days of the filing of the grievance or complaint.

The grievance or complaint must be in writing, signed, and dated. For resolution purposes, the State recommends that the WDC obtain the following information for all complaints:

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

The absence of any of the requested information shall not be a basis for dismissing the grievance or complaint.

A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. The WDC shall send a copy of the grievance or complaint to the respondent.

3. **Informal Resolution:** The WDC shall notify the complainant and the respondent of the opportunity for an informal resolution. Respondents must make good faith efforts to resolve all grievances or complaints prior to the scheduled hearing. Failure on the part of either party in the grievance or complaint to exert good faith efforts shall not constitute a basis for dismissing a grievance or complaint, nor shall this be considered to be a part of the facts to be judged in the resolution process.

Where a complaint alleges a violation of WIA Title I, grant or any agreements under WIA, the WDC must assure that every grievance or complaint not resolved informally or not withdrawn is given a hearing, regardless of the grievance or complaint's apparent merit or lack of merit.

When the complaint has been resolved through the informal resolution process, the WDC shall attempt to contact the complainant and have him or her provide a written withdrawal of the complaint within 10 days of the receipt of the notice of resolution. The WDC shall maintain copies of correspondence in the complainant's file.

4. **Notice of Hearing:** Hearings on a written grievance or complaint or those grievances or complaints not resolved informally shall be conducted within 30 days of filing of a grievance or

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

- The date of the notice, name of the complainant, and the name of the party against whom the grievance or complaint is filed.
 - The date, time, and place of the hearing before an impartial complaints officer.
 - A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
 - The name, address, and telephone number of the contact person issuing the notice.
5. **Local Complaints Officer:** An impartial local complaint officer shall conduct the hearing. The State suggests the WDC seek impartial local complaint officers that will not be directly affected by, or will not implement the final resolution of, a specific grievance or complaint. The hearing will be conducted in an informal manner and according to the procedures established by the WDC.
6. **Decision:** Not later than 60 days after the filing of the grievance or complaint, the local complaint officer shall mail a written decision to both parties by certified mail. The local complaint officer's decision shall contain the following information:
- The names of the parties involved;
 - A statement of the alleged violation(s) and issues related to the alleged violation;
 - A statement of the facts;
 - The local complaint 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 within 10 days of the receipt of the decision.
7. **Appeal:** If a complainant does not receive a decision at the WDC level within 60 days of the filing of the grievance or complaint, or receives an adverse decision, the complainant then has the right to file an appeal with the State.

The complainant may request a State hearing by submitting a written notice of appeal to the Assistant Commissioner, WorkSource Standards and Integration Division, Washington State Employment Security Department, PO Box 9046, Olympia, Washington 98507-9046.

IV. STATE-LEVEL GRIEVANCE AND COMPLAINT PROCEDURES

Title 20 CFR Section 667.600(d) requires that the State provide a process for dealing with grievances and complaints from participants or interested parties affected by the statewide workforce investment programs. It also requires that the State provide a process for resolving appeals of decisions issued at the WDC level; remanding grievances and complaints to the WDC grievance process. Section 667.600 also requires that the State offer an opportunity for an informal resolution and a hearing. The hearing is to be completed within 60 days of the filing of the grievance or complaint.

In cases where the State has imposed either administrative or financial/monetary sanction(s) resulting from monitoring, investigations, or audits, the complainant may file an appeal with the State through the procedures described in the WIA Audit Resolution Policy (WIA Policy 3255).

A. State-Level Informal Resolution and Hearing Procedures

All complaints of noncriminal violations of the requirements of WIA by the State, or complaints by individuals or interested parties affected by the statewide workforce investment program shall be

filed in writing with the Assistant Commissioner, of the Employment and Training Division of the Employment Security Department (ESD), or his/her designee. All requests for State hearings should include the same basic elements necessary for local-level hearings. See pg 4 Section 2.

Upon receipt of the request for a State hearing, the Assistant Commissioner or his/her designee shall review the grievance or complaint and shall provide an opportunity for an informal resolution. The Assistant Commissioner or designee shall notify the complainant and the respondent within 10 days of receipt of the grievance or complaint and proceed with the informal resolution process. If the State cannot resolve the grievance or complaint informally, then a hearing will be held.

Hearings on any grievance or complaint shall be conducted within 30 days of the filing of a grievance or complaint. The complainant and the respondent shall be notified in writing of the hearing 10 days prior to the date of hearing. The hearing notice shall provide the following:

- The date, time, and place of the hearing before an impartial hearing officer.
- The pertinent sections of the WIA or any other federal regulations involved.
- A statement of the alleged violations. These statements must accurately reflect the content of the grievance or complaint as submitted by the complainant. However, clarifying notes may be added to assure that the grievance or complaint is addressed accurately.
- The name, address, and telephone number of the contact person issuing the notice.

B. Appeals of WDC Decisions or Requests for ESD Review

1. A complainant may file a request for review with ESD if no decision has been issued at the WDC 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.
2. A complainant may file an appeal if the WDC has issued an adverse decision. The request for an ESD 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 WDC 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.
3. 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 WDC;
 - A statement of the basis of the request or appeal; and
 - Copies of relevant documents, such as the complaint filed at the WDC and the local decision, if any.
4. If a fact-finding hearing was held at the WDC level, the ESD shall request the record of the hearing from the WDC and shall review the record without scheduling an additional hearing. If a fact-finding hearing was not held at the WDC level, the ESD shall instruct the WDC to hold a hearing within 30 days of receipt of the appeal or request for an ESD review.

If the WDC does not hold a hearing within the required timeframe, the ESD shall, within 30 days of receipt of the appeal or request for hearing, schedule a fact finding hearing before a hearing officer. The ESD shall notify the concerned parties and the WDC by first class mail, certified with a return receipt, of the following information at least 10 days before a scheduled hearing. The notice shall include:

- The date of the notice, name of the complainant, and the name of the party against whom the complaint is filed.
- The date, time, and place of the hearing before a hearing officer.

- A statement of the alleged violations. This statement shall accurately reflect the content of the complaint as submitted by the complainant.
- The name, address, and telephone number of the contact person issuing the notice.

C. Employment Security Department Hearing

The ESD 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 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.

D. Referral of Local Grievances or Complaints

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

E. Remedies

1. Section 667.600 (e) provides remedies that may be imposed for a violation of any requirement under WIA Title I. Remedies shall be limited to:

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

2. Nothing in paragraph 1 shall be construed to prohibit a complainant from pursuing a remedy authorized under another federal, State, or local law for a violation of WIA Title I-B.

V. **FEDERAL-LEVEL APPEAL PROCESS**

Under Title 20 CFR Section 667.610(a)(1), if the State has not issued a decision within the required 60-day time limit, the complainant can file an appeal to the Secretary of Labor. The appeal must be filed with the Secretary of Labor no later than 120 days of the filing of the grievance or complaint with the State, or the filing of the appeal of a local grievance or complaint with the State.

In cases where a decision has been reached and the State issued an adverse decision, the complainant can file an appeal to the Secretary of Labor within 60 days of the receipt of the decision being appealed.

The request for appeal must be submitted by certified mail, return receipt to: Attention: ASET Secretary U. S. Department of Labor 200 Constitution Avenue, NW Washington, D.C. 20210. A copy of the appeal must be simultaneously provided to the 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).

VI. **GENERAL GUIDELINES**

The purpose of these guidelines is to provide information regarding other key elements of complaint management.

A. **Due Process**

Due process is the established proceedings that are designed to protect the legal rights of the individual. All persons affected by WIA should be made aware of their rights and have access to appropriate remedies. Local complaint procedures should contain full due process protections.

B. **Accurate and Complete Fact Finding**

Fact-finding is the discovery or determination of facts. WIA requires complaint procedures that ensure an accurate fact-finding hearing. The first step in the process of completing a hearing and an informal resolution within 60 days is accurate fact-finding.

Initial fact-finding should result in determining the type of complaint. The WDC complaint and grievance officer and the Employment Security Department's State Audit Resolution Team must be notified immediately if there are criminal complaints involving fraud or program abuse. An Incident Report must be provided after the immediate notification.

Generally, fact-finding includes:

1. Establishing the official record.
2. Determining the exact laws, regulations, or policies that have been violated. Participants may have language limitations or other barriers. The individual conducting the fact-finding should establish what they heard, what the issue is, and what the violation is.
3. Creating an accurate and complete record about the complaint. Detailed note taking is needed. Notes should be typed into a report format with complete details about the complaint.
4. Listening to the complainant. There is a reason for them to come into the office or contact you. Understanding where they are coming from is very important.
5. Taking a complaint in person or by the telephone. This is an important part of the process. The complainant may need assistance with the complaint.
6. Determining what is causing this individual to contact you. Determine what the problem is, who is causing the problem, and how the problem should be dealt with.
7. Determining the facts from the complainant point of view. Ensure that all the necessary information is gathered. This may be the first indication of the type of complaint and what is required to process it.
8. Obtaining copies of documents from the complainant for the complaint file.
9. Organizing and processing. The complaint needs to be processed and compared to the requirements in the law, regulations, and policies. Complaints inform the system that the WIA program may not be working correctly.

Accurate and complete fact-finding should enable the system to determine whether the complaint is a violation of a law, regulation, fraud or abuse, an EO issue, or a program violation.

All complaints must be logged in to establish the receipt date. The initial finding of facts report must be made and the complaint must be logged to the appropriate complaint log(s).

C. **Record Keeping**

Complaint and grievance procedures should incorporate record keeping procedures that meet the following standards:

All records and correspondence related to complaints and grievances should be maintained to ensure security and confidentiality. Complaint files should be physically separate from any other records.

WIA Title I complaint records and actions related to resolving complaints shall be maintained for three years from the date of submission of the final expenditure report to DOL for the grant. Grantees and subgrantees must follow the requirements of 29 CFR Part 97.42 for States and local governments. See 29 CFR 95.53 for institutions of higher education, non-profit organizations, and commercial organizations.

A separate file must be maintained for each complaint or grievance filed. The file shall include:

- The original complaint filed.
- A chronological summary of all contacts made to investigate or resolve issues.
- All fact-finding reports and interviews.

- Copies of all correspondence and agreements with involved parties.
- Copies of all documents related to the issues that were collected and reviewed.

All actions taken in relation to receipt, referral, and/or disposition of each complaint and grievance must be recorded in a complaint log.

All requested information must be submitted to the Employment Security Department.

Lawsuits or Administrative Enforcement Actions

The Workforce Development Area or grant recipient shall notify the Assistant Commissioner of the WorkSource Standards and Integration Division of any lawsuits or administrative enforcement actions filed against it or any of its subrecipients.

DEFINITIONS:

Days - Days mean consecutive calendar days, including weekends and holidays.

Workforce Development Council - Workforce Development Council includes the administrative entity and its subrecipients to which the administrative entity has delegated the complaint and grievance resolution process.

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

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

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

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

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

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

ATTACHMENT:

Complaint and Grievance Summary of Rights

(Requirement: Signed and maintained in each client file, and copy provided to client.)

REFERENCE:

- Section 188 of the Workforce Investment Act;
- Part 667 Subpart B Administrative Rules, Costs and Limitations and Subpart F Grievance
- Procedures, Complaints, and the State Appeals Process of Department of Labor (DOL) regulations implementing the Workforce Investment Act (WIA) of 1998;
- Department of Labor regulations August 11, 2000, including Part 667 Subpart F Grievance Procedures, Complaints, and the State Appeals Process.
- Department of Labor regulations implementing Section 504 of the Rehabilitation Act (29 CFR Part 32);
- Department of Labor regulations implementing the Nondiscrimination and Equal Opportunities
- Requirements of the Workforce Investment Act of 1998 (29 CFR Part 37) issued November 12, 1999

- Title II of the Americans with Disabilities Act of 1990, as amended (28 CFR Part 35)
- WIA Title 1B – Washington State Policy 3440 Revision 1, October 11, 2005.