
**Workforce Investment Act
State Compliance Policies**

**Non-Criminal Grievance/Complaint
and Hearing Procedure**

Section 4.4

March, 2000

I. INTRODUCTION:

- A. The Governor is responsible for implementing procedures for the State and the grant recipients to assure and resolve any grievances alleging a violation of the Act, regulations, grant or other agreements under the Act.
- B. The procedures shall resolve grievances arising from: WIA programs operated by each grant recipient and subrecipient under the Act; actions taken by the Governor with respect to investigations or monitoring reports, audit disallowances or the imposition of sanctions; violations of the terms and conditions of employment.
- C. The procedures that follow establish the State's policy for administering grievances and complaints. Even though the procedures list the formal process of resolution, the State encourages informal resolution at all levels.
- D. There is nothing in the formal process that denies any individual their rights to seek resolution through civil action authorized by federal, state and local laws.
- E. State, grantee or contractor employees may use the state grievance procedures after they have exhausted their local grievance procedures.
- F. Any registrant, participants, applicants, eligible applicants, subrecipients, subcontractors, employees and other interested persons may file a grievance with an administrative entity, contractor or grantee.

II. PRINCIPLES GOVERNING GRIEVANCES/COMPLAINTS:

- A. All grievances/complaints must be received within 180 days of the alleged occurrence. Grievants/complainants should be encouraged to submit complaints in writing; or grievances and complaints may be investigated at the sole discretion of the center director. [137.72]
- B. No person filing a grievance/complaint shall be the victim of harassment, reprisal, coercion or any form of discrimination or retaliation for having filed a complaint. It is a person's right to file a grievance/ complaint and express their opinion in a legal allegation. [137.11] A complainant has the right to withdraw their grievance/complaint in writing at any time prior to the formal hearing.

- C. Grievances/complaints may be amended to clarify issues, but not to add new allegations.
- D. A complainant has the right to be represented by a properly delegated person of their own choosing at all levels of the complaint process, but at their own expense. [' 37.70 and ' 37.75]
- E. All employees and participants either in employment or training shall be provided with a written description of these procedures, notification of their right to file a grievance/complaint and the process of how to do so; the participant shall be notified if local laws, agreements or personnel rules allow for additional procedures to file a grievance/complaint. [' 37.9 and ' 37.29]
- F. Complainants must exhaust the procedures at the grant recipient level before the grievance/complaint may be filed with the State. The only exceptions will be when the Governor has determined that:
 - 1. The grant recipient did not act within the specified time frame.
 - 2. The grant recipient was not in compliance with either their own procedures or the State=s.

III. GRIEVANCE/COMPLAINT RESOLUTION PROCEDURE AT GRANTEE LEVEL:

- A. **Filing the Grievance/Complaint:** Written grievances/complaints must be in signed and dated. Oral grievances/complaints may be accepted at the sole discretion of the grantee. The date of the grievance/complaint is received becomes the official filing of the grievance/complaint. [' 37.73]
 - 1. The complainant must provide the following information in original filing:
 - a. Full name, telephone number and mailing address of the complainant;
 - b. Full name, telephone number and mailing address of the respondent (agency or person involved);
 - c. A statement of the allegations to include the clear and concise statement of the facts, dates and supporting documentation;
 - d. The believed violations of the Act, regulations, labor standards, grant or agreements, to the best of the complainant=s knowledge; and
 - e. Resolution sought by the complainant.
 - 2. Any absence of the required information shall not constitute grounds for dismissal of the grievance/complaint.
 - 3. Upon receipt of the grievance/complaint the grantee shall, within seven (7) days,

forward to the *State* and the respondent a copy of the written grievance. The *State* will issue investigative instructions upon receipt of the formal complaint.

4. The grantee shall encourage informal resolution between the respondent and the complainant. If informal resolution is not possible, the grantee must notify the complainant in writing of the next formal procedural step in the grievance process.

B. Notice of Hearings:

1. Prior to scheduling a hearing, the Grantee shall conduct an investigation and issue findings with sixty (60) days to State. If there is evidence to substantiate the complaint, the Grantee then needs to attempt resolution informally with the complainant. In the event an informal resolution cannot be met, the Grantee must:
 - a. Conduct a hearing by an impartial independent hearing officer within 60 days of filing of a grievance/complaint;
 - b. Grantee shall notify the complainant and the respondent of the ANotice of Hearing@ not less than 10 days prior to the date of the hearing by certified mail (return receipt requested). The time of the hearing may be earlier if mutually agreed to by both parties.
 - c. The ANotice of Hearing@ shall be in writing and include the following information:
 - (1) Grievance/complaint case number, name of complainant, name of respondent, date of grievance/complaint;
 - (2) Date, time and location of the hearing before an impartial hearing officer and an opportunity to present evidence;
 - (3) A statement of the alleged violation(s).
2. While in preparation for the hearing, both the respondent and complainant are encouraged to attempt informal resolution. A grantee grievance officer will conduct an informal conference in an attempt to resolve the problem(s).
3. A request for a five-day postponement may be made by either party upon a showing of good cause to the hearing officer, provided the hearing is still conducted within thirty (30) days of the filing of the grievance.
4. Prior to actual beginning of the hearing the complainant has the right to withdraw the grievance/complaint.
5. An impartial and independent hearing officer shall be designated by the grantee.

C. Rules of the Hearing:

1. The strict rules of evidence will be waived since the hearing shall be conducted in an informal manner by both parties in order to obtain full disclosure of all the facts;
2. The presentation of both written and oral testimony will be allowed;

3. Both parties may present witnesses and the right to cross-examine the witnesses;
4. Both parties have the right to examine all relevant records and documents submitted;
5. If either the complainant or the respondent fails to appear at the hearing, the impartial hearing officer shall render a decision based on the review of all available information;
6. All hearing records, depositions, exhibits and other supporting documentation will be forwarded by the Hearing Officer to the State for record retention immediately following the hearing determination.

D. Role and Responsibilities of the Hearing Officer:

1. Maintain the dignity of the hearing and protect the rights of both parties;
2. Insure the hearing is recorded and a record of the hearing is made available to all parties, if requested;
3. Begin the hearing by informing both parties of the issues involved;
4. Explain that all testimony is under oath;
5. Explain the hearing procedures and that the complainant bears the burden of proving the allegation(s) in the grievance;
6. Determine the order of evidence and its relative significance;
7. Submit a written decision to the grantee.

E. Decision:

The grantee is required to issue a written decision not later than sixty (60) days of the filing of the grievance. The decision must be delivered by certified mail, return receipt requested, to both complainant and respondent and include the following:

1. Case grievance/complain number, names of complainant and respondent;
2. Statement of alleged violations;
3. Decision and reason(s) for decision;
4. Statement of corrective action, if any, to be taken;
5. Notice of the right to request a review by the Governor (refer to Section VII below); the request must be made within ten (10) days of receipt of the adverse decision.

SPECIAL RULE: If the decision is not given with the sixty (60) day period or if an unsatisfactory decision was made, the complainant has the right to request a review by the Governor. The request must be made within fifteen (15) days from the date on which the complainant should have received a decision. (refer to Section VII. below for further information)

IV. GRIEVANCE/COMPLAINT RESOLUTION PROCEDURE AT THE EMPLOYER LEVEL:

- A. State grantees, and other subrecipients shall ensure that other employers, including private-for-profit employers of participants under the Act, also have a grievance procedure relating to the terms and conditions of employment available to their participants;
- B. Employers may operate their own grievance system or may utilize the system established by the State or grant recipient. Employers must inform participants when they begin employment which procedure they are to follow;
- C. An employer system shall provide for, upon request by the complainant, a review of an employer's decision by the grant recipient and the Governor, if necessary;
- D. If the employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then those procedures should be followed for the handling of WIA complaints under this section.

VI. GRIEVANCE/COMPLAINT RESOLUTION PROCEDURE AT THE STATE LEVEL:

- A. A complaint is filed directly with the State when it is inappropriate to file the complaint with the grantee or if the complainant is an State employee;
- B. State level procedure is the same as the Grantee level procedure.

VII. FILING A REQUEST FOR REVIEW BY THE GOVERNOR:

- A. Complainants shall request a review by the Governor by forwarding the written complaint, documentation and hearing record to:

[Need decision from State Board]

- B. The request for review must be in writing, signed and dated. The date of the request is received by the *State* becomes the official filing of the request for review; the request must contain the following complete and accurate information:
 - 1 Full name, telephone number and mailing address of the complainant;
 - 2. Full name, telephone number and mailing address of the respondent (agency or person involved);

3. A statement of the allegations to include a clear and concise statement of facts, dates and supporting documentation.
4. The basis upon which review is sought.

C. Review:

1. The Governor shall provide for an independent review by a reviewer who is independent of the WIA program.
2. The reviewer must make a decision within twenty-five (25) days after receiving a written request for review. The review is limited to review of the investigative or hearing record.

D. Decision:

1. The Governor will issue a written decision not later than thirty (30) days from the filing of the request for review. The decision will be sent to both complainant and respondent by certified mail, return receipt requested. It will include the following:
 - a. Case grievance/complaint number, name of complainant and respondent;
 - b. Statement of alleged violations;
 - c. Statement of facts;
 - d. Decision of the review and reason(s) for decision;
 - e. Statement of corrective action, if any, to be taken.

VIII. REVIEW BY THE SECRETARY OF LABOR:

- A. Should the Governor fail to provide a decision, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the act or its regulations have been violated; or a complaint alleging WIA labor standards violations may be submitted to the Secretary by either party to the complaint when the complainant has exhausted the grievance procedure at the grantee or state level or no decision was made within the 60-day time period.

Note: The Secretary of Labor may exercise the authority for Federal-level review.

The request shall be filed within 120 days from the date on which the complainant should have received a decision or within 60 days if a decision has been reached but the party to which such a decision is adverse. The grievance/complaint should contain the following:

1. The full name, telephone number, if any, and address of the person making the grievance/complaint.
2. The full name and address of the respondent against whom the grievance/complaint is

made;

3. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;
4. The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;
5. 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;
6. A statement of the date the grievance/complaint was filed with the Governor, the date on which the Governor should have issued a decision, and an attestation that no decision was issued;
7. A request will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and grant recipient;
8. Send request to:

Secretary of Labor
U.S. Department of Labor
Attn: ASET
Frances Perkins Building
Room N5309
200 Constitution Avenue NW
Washington, D.C. 20210

And copies to the USDOL Region IX ETA Regional Administrator and the opposing party.

9. The Secretary shall act within 120 days of receipt of the request and where there is reasonable cause to believe the Act or regulations have been violated shall direct the Governor to issue a decision adjudicating the dispute pursuant to state and local procedures. The Secretary's action does constitute final agency action and is not appealable under the Act. If the Governor does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the Governor for failing to issue a decision.