

RICK SNYDER
GOVERNOR



CHRISTINE QUINN
DIRECTOR

OFFICIAL

E-mailed: 10/02/13 (rwg)

Workforce Development Agency, State of Michigan (WDA)
Policy Issuance (PI): 11-37, Change 1

Date: October 02, 2013

To: Michigan Works! Agency (MWA) Directors, Local Workforce Development Boards (WDBs), and Local Grant Recipients

From: Paula Mitchell-Monroe, Director, Office of Program Review
Workforce Development Agency
SIGNED

Subject: Grievance and Complaint Policy

Affected: Workforce Investment Act (WIA) Programs, Temporary Assistance for Needy Families (TANF), Food Assistance Employment and Training (FAE&T), Trade Act (except requests for redeterminations), and State of Michigan General Fund/General Purpose (GF/GP) Funded Programs Administered by the WDA.

Rescissions: None

References: WIA Sections 116(a)(5) and 181(c)
WIA Regulations, 20 CFR 667.600 and 20 CFR 667.645(a and b)
Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 P.L. 104-193
TANF Regulation, 45 CFR 261.70
Food Stamp Act of 1977

Background: This policy issuance sets forth the procedures that shall govern local and state-level grievances and complaints in accordance with the prescribed programs. Specifically, this policy establishes a process for grievances filed by participants, sub-grantees, subcontractors, service providers, employees, One-Stop partners, providers of training services, and other interested parties.



Victor Office Center | 201 North Washington Square, 5th Floor | Lansing, Michigan 48913
517.335.5858 | TTY 888.605.6722

This policy also establishes a process for appeals filed by local grant recipients regarding monitoring findings, incident report findings, single audit resolution findings/issues, and other matters.

The hearing procedures in this policy reflect requirements of federal law and are not contested case procedures under the Administrative Procedures Act (1969 PA 306), as amended, being MCL 24.201 *et. seq.*

Policy: **The following procedures shall govern the processing of grievances and complaints in accordance with the prescribed programs.**

I. Definitions

Appellant: the party that files the appeal to the WDA and the U.S. Department of Labor (USDOL).

Days: means consecutive calendar days, including weekends and holidays.

Grievance: a written complaint filed in accordance with this policy.

Local Grant Recipient: entity that expends awards received directly from the WDA to carry out a program or programs.

Interested Parties: includes sub-grantees, subcontractors, service providers, employees, One-Stop partners, providers of training services, and other relevant parties.

Participant: an individual who has been determined to be eligible to participate in, and who is receiving services under a program covered under this policy.

Petitioner: the party that files the grievance.

Respondent: the party who argues against the petitioner or appellant.

Service Providers: sub-recipients or entities that expend awards received from a local grant recipient or Administrative Entity (AE) to carry out a program or programs.

II. General Requirements

Local Grievance Policy: Local grant recipients are responsible for developing, maintaining, and making available to participants, and other interested parties, a grievance procedure, consistent with this policy, which involves WIA, TANF, FAE&T, Trade Act (except requests for redeterminations), and State of Michigan GF/GP programs administered by the WDA. The locally developed procedure

must be in compliance with all state and federal rules and regulations. The locally developed procedure must also describe how the content of the procedure is provided to interested parties affected by the local Workforce System, including One-Stop partners, service providers, Employer-Based Training employers and participants. For example:

- A. **One-Stop Partners** - included in a MOU or other signed agreement with the current MWA Complaint and Grievance policy attached.
- B. **Service Providers** – included in the contract language with the current MWA Complaint and Grievance policy attached to the contract.
- C. **Employer-Based Training Employers** – included in the contract language with the current MWA Complaint and Grievance policy attached to the contract; included in the contract language and advise where policy can be reviewed.
- D. **Other Interested Parties** – The current MWA Complaint and Grievance policy is posted in all One-Stop and Service Center locations in areas that are accessible to the public. Hard or electronic copies are available to the public upon request.

In addition, the locally developed policy shall be provided to participants. Participants must sign and date documentation acknowledging receipt of, and agreement to follow, the grievance procedures outlined in the policy.

All locally developed grievance and complaint policies, procedures, signed acknowledgements, and related documentation shall be maintained and accessible for review by the WDA.

Accessibility: Generally, all processes prescribed in this policy must be accessible to persons with disabilities or other barriers, as required by law.

Posting: Grievance procedures must be posted in areas where administration and program services are provided, and must be accessible to persons with disabilities or other barriers, as required by law.

Monitoring/Tracking: A monitoring/tracking system must be maintained to document the grievances received and their disposition. The local grant recipient is responsible for maintaining these records for review for a period of three years. The retention period begins on the date of the WDA's acceptance of the final closeout report for the grant or contract. Records shall be retained beyond three years if any litigation or audit is begun, or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records shall be retained until the litigation, audit, or claim has been resolved.

Language Barriers: Pursuant to 29 CFR 37.35, where a significant number or proportion of limited English-speaking individuals exist, the local grant recipients are responsible for making a reasonable effort to assure that the information in this policy will be provided to and understood by limited English-speaking individuals who seek information regarding the grievance procedure.

Informal Resolution: The local grant recipient is responsible for making available to participants and interested parties, an opportunity to resolve complaints informally before they become grievances.

III. Grievance Procedures

Step 1: Local Level Grievance Procedures

Filing: All grievances related to WIA, TANF, FAE&T, Trade Act (except requests for redeterminations), and State of Michigan GF/GP programs funded by the WDA are required to be filed within one year of the date of the event that gave rise to the grievance.

Criteria: All grievances shall be in writing and contain, to the extent practicable, the following information:

- a) The full name, address, and telephone number of the petitioner;
- b) The full name, address, and telephone number of the respondent(s);
- c) A clear and concise statement of the facts, as alleged, including the pertinent dates, constituting the alleged violation;
- d) The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated; and
- e) The relief requested.

Rejection: The grievance may be rejected by the AE of the Workforce Development Board (WDB) if:

- a) It lacks merit.
- b) The petitioner fails to state a grievable issue.
- c) There is no relief that can be granted.
- d) The petitioner fails to comply with the procedures prescribed in this policy issuance.

The AE of the WDB will inform the petitioner and respondent in writing of the reason(s) the grievance was rejected. The notification must be issued within 60 days from the date the grievance was filed and will include the opportunity to appeal to the WDA.

Hearing: For WIA related grievances, a local level hearing shall be conducted. A local level hearing is not required if the grievance is resolved prior to the hearing date or the petitioner withdraws the grievance. Should a hearing be held on a local level grievance, the hearing shall be conducted within 30 days from the date the grievance was filed, and a decision shall be rendered no later than 60 days from the date the grievance was filed.

Notice: If a hearing is to be conducted, the AE of the WDB must provide written notice to the petitioner and respondent. The notice shall include the date, time, place of the hearing and outline the process to present evidence including witnesses. The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than 10 days prior to the scheduled hearing date.

Hearing Process: At a minimum, the hearing process shall include:

- a) A hearing officer;
- b) An opportunity for each party to present witnesses and evidence;
- c) An opportunity for each party to ask questions of all witnesses providing testimony at the hearing;
- d) A record of the hearing; and
- e) A list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

Decision: A written decision shall be issued by the hearing officer and shall include the following information:

- a) Date, time, and place of hearing;
- b) Name and address of the petitioner;
- c) Name and address of the respondent;
- d) Names and addresses of all witnesses called by the parties;
- e) Information sufficient to identify all evidence presented;
- f) A reiteration of the issues raised;
- g) A determination of the facts;
- h) An analysis of the issues as they relate to the facts;
- i) A decision addressing each issue; and

j) A statement regarding the opportunity to appeal the decision to the WDA.

Appeal: If a response to the grievance is not received within the time prescribed (i.e., 60 days from the filing of the grievance), or should either party be dissatisfied with a decision, there is opportunity for an appeal to the WDA.

Step 2: State Level Review

Appeal: A local level grievance decision may be appealed. The appeal shall be in writing to the WDA. The appeal shall be filed no later than 10 days from receipt of an adverse decision at Step 1, or 10 days from the date a decision was due (i.e., 60 days from filing of the grievance) but not issued at Step 1.

All appeals of a local level grievance decision shall be submitted by certified mail, return receipt requested to:

Workforce Development Agency
Executive Office
Victor Office Building, 5th Floor
201 N. Washington Square
Lansing, MI 48913

Appeal Criteria: All appeals shall contain, to the extent practicable, the following information:

- a) The full name, address, and telephone number of the appellant(s);
- b) The full name, address, and telephone number of the respondent(s);
- c) A clear and concise statement of the facts, as alleged, including the pertinent dates, constituting the alleged violation;
- d) The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated; and
- e) The relief requested.

Evidentiary Documentation: Both parties must be notified that they should send all relevant information and documentation generated at the local hearing and related to this appeal to the WDA address cited above to assist with the determination on the grievance.

Documentation Deadline: Both parties must be notified that all relevant documentation should be submitted to the WDA within 15 days of the filing of the appeal.

WDA Action: Following consideration of the appeal, the WDA will take one of the following actions:

1. **Rejection of the Appeal:** A grievance may be **rejected**, and a final determination issued, if it is determined that:
 - a) It lacks merit;
 - b) It fails to state a grievable issue;
 - c) There is no relief that can be granted; or
 - d) If the appellant fails to comply with the applicable procedures prescribed in this policy (e.g., the 10 day filing requirement, among other provisions).

The appellant will be informed, in writing as soon as possible or within 60 days from the date the appeal was filed; of the reason the appeal was rejected.

2. **Waiver of the Hearing:** In lieu of a hearing for an appeal of a WIA related local level decision, the parties to the appeal may mutually consent to having the WDA decide the matter based on the record created at the local level.

If both parties and the WDA are in agreement, the hearing is waived. Both parties must provide the WDA with written confirmation that demonstrates their consent to waive the hearing.

WDA will issue a final decision within 60 days of the receipt of the appeal taking into consideration the evidentiary documentation previously submitted.

3. **Hearing:** For an appeal of a WIA related local level decision, an opportunity for a hearing must be provided. However, a hearing will not be held under certain circumstances. (see rejection of appeal or waiver of hearing, as previously prescribed in this policy issuance.) If a hearing on an appeal is to be held, it shall be conducted within 30 days of the filing of the appeal. A hearing is not required at this step if the appellant withdraws the appeal.

A hearing may be held, but is not required, at this step for an appeal of a non-WIA related local level decision.

When a hearing is conducted on an appeal, the appellant and the respondent will be provided written notice of the date, time, and place of the scheduled hearing and of the opportunity to present evidence, including witnesses. The

notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than ten days prior to the scheduled hearing date.

At a minimum, the hearing process shall include:

- a) A hearing officer;
- b) An opportunity for each party to present witnesses (subpoenas are not authorized under this policy issuance) and evidence;
- c) An opportunity for each party to ask questions of all witnesses providing testimony at the hearing; and
- d) A record of the hearing and a list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

- 4. Final Decision:** A written decision shall be issued not later than 60 days after the filing of the appeal. The decision shall include the following:
 - a) Date, time and place of hearing (if held);
 - b) Name and address of the petitioner;
 - c) Name and address of the respondent;
 - d) Names and addresses of all witnesses called by the parties;
 - e) Information sufficient to identify all evidence presented;
 - f) A reiteration of the issues raised;
 - g) A determination of the facts;
 - h) An analysis of the issues as they relate to the facts; and
 - i) A decision addressing each issue.

Step 3: Federal Government Review

Appeal: In general, a state level decision is final. However, if a decision is not issued by the due date, a WIA related appeal may be reviewed by the Secretary of the USDOL. A WIA related decision may be appealed by the adversely affected party to the USDOL within 60 days of receipt of the WDA decision. Pursuant to 20 CFR 667.610(c), an appeal must be submitted to the Secretary of the USDOL by certified mail, return receipt requested, to:

Secretary
U.S. Department of Labor
Attention: ASET
Washington, DC 20210

A copy of the appeal must be simultaneously provided to:

Regional Administrator
Employment and Training Administration
U.S. Department of Labor
230 South Dearborn Street, Room 628
Chicago, IL 60604

And

Workforce Development Agency
Executive Office
Victor Office Building, 5th Floor
201 N. Washington Square
Lansing, Michigan 48913

IV. State Level Review of a Local Grant Recipient Appeal

Filing: Local grant recipients may appeal monitoring findings, incident report findings, single audit resolution findings/issues, and other matters related to State Workforce Investment programs by filing an appeal with the WDA within 30 days of the adverse decision.

Other interested parties cannot appeal monitoring findings, incident report findings, single audit resolution findings/issues, etc. (which are issued by WDA) directly to WDA. To the extent that interested parties are affected by a WDA decision regarding monitoring findings, incident report findings, program review findings, single audit resolution findings/issues, etc., the interested parties must first file a grievance at the local level (see Step 1: Local Level Grievance Procedures).

All appeals shall be submitted to:

Workforce Development Agency
Executive Office
Victor Office Building, 5th Floor
201 N. Washington Square,
Lansing, Michigan 48913

Criteria: All appeals shall contain, to the extent practicable, the following information:

- a) The full name, address, and telephone number of the appellant(s);
- b) The full name, address, and telephone number (if any) of the respondent(s);

- c) A clear and concise statement of the facts, as alleged, including the pertinent dates, constituting the alleged violation;
- d) The provision of the act, regulations, grant, contract, or other agreements under the act believed to have been violated; and
- e) The relief requested.

Any appeal of USDOL monitoring findings shall only be reviewed for compliance with USDOL requirements. A record shall be created to forward to USDOL, if applicable.

Hearing Notice: The WDA may conduct a hearing on an appeal within 30 days of the filing of the appeal. The appellant and the respondent will be provided written notice of the date, time, and place of the scheduled hearing date and of the opportunity to present evidence, including witnesses. The notice of the hearing shall indicate the issues to be decided. Notice shall be given not less than 10 days prior to the scheduled hearing date.

Hearing: For an appeal of a WIA related local level decision, an opportunity for a hearing must be provided. However, a hearing will not be held if the WIA related appeal involves a non-grievable issue.

If a hearing on an appeal is to be held, it shall be conducted within 30 days of the filing of the appeal. A hearing is not required at this step if the appellant withdraws the appeal.

Hearing Process: At a minimum, the hearing process shall include:

- a) A hearing officer;
- b) An opportunity for each party to present witnesses (subpoenas are not authorized under this policy) and evidence;
- c) An opportunity for each party to ask questions of all witnesses providing testimony at the hearing; and
- d) A record of the hearing and a list of all evidentiary exhibits presented at the hearing.

At the discretion of the hearing officer, there may be an opportunity to exchange evidentiary information prior to the hearing.

Decision: A written decision shall be issued not later than 60 days after the filing of the appeal. The decision shall include the following:

- a) Date, time, and place of hearing;
- b) Name and address of the appellant;
- c) Name and address of the party against whom the appeal is made;
- d) Names and addresses of all witnesses called by the parties;
- e) Information sufficient to identify all evidence presented;
- f) A reiteration of the issues raised;
- g) A determination of the facts;
- h) An analysis of the issues as they relate to the facts; and
- i) A decision addressing each issue.

Appeal: The WDA's decision is final. The local grant recipient may appeal noncompliant WIA grievance procedures of the WDA to the Secretary of the USDOL. Pursuant to 20 CFR 667.610(c), an appeal must be submitted to the Secretary of the USDOL within 60 days of receipt of the WDA decision by certified mail, return receipt requested, to:

Secretary
U.S. Department of Labor
Attention: ASET
Washington, DC 20210

A copy of the appeal must be simultaneously provided to:

Regional Administrator
Employment and Training Administration
U.S. Department of Labor
230 South Dearborn Street, Room 628
Chicago, IL 60604

And

Workforce Development Agency
Executive Office, 5th Floor
Victor Office Building
201 N. Washington Square, 5th Floor
Lansing, Michigan 48913

V. Appeals Related to Designation as a Local Workforce Investment Area

In accordance with Section 116(a)(5) of the WIA and 20 CFR 667.645(a) and (b):

Appeals of denial of automatic or temporary and subsequent designation as a local workforce investment area may be filed with the Governor's Talent

Investment Board (GTIB). Appeals must be filed by certified mail, return receipt requested, to:

Workforce Development Agency
Governor's Talent Investment Board
201 N. Washington Square, 5th Floor
Lansing, Michigan 48913

If the appeal to the GTIB does not result in designation as a local workforce investment area, the appellant may request a review by the Secretary of the USDOL. Appeals must be filed no later than 30 days after receipt of written notification of the denial from the State Board, and must be submitted by certified mail, return receipt requested, to:

Secretary, U.S. Department of Labor,
Washington, DC 20210
Attention: ASET.

A copy of the appeal must be simultaneously provided to the GTIB.

VI. Special Provisions

Equal Opportunity: Complaints alleging violation of the nondiscrimination and equal opportunity (EO) provision of state/federal grant programs must be resolved in accordance with the nondiscrimination and EO policy guidelines issued by the WDA.

Criminal Conduct: Known or suspected fraud, abuse, or criminal conduct under the WIA shall be reported in accordance with the incident report guidelines issued by the WDA.

TANF Displacement: Pursuant to the PRWORA Regulation 45 CFR 261.70, a grievance may be filed by an affected individual if (1) a recipient of TANF is placed in a position when any other individual is on layoff from the same or any substantially equivalent job or (2) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult receiving TANF assistance. In this situation, either party to the grievance, the TANF recipient, or the displaced employee, may appeal the decision rendered by the AE of the WDB to the WDA.

WIA Displacement: Pursuant to WIA Regulation 20 CFR 667.270(d), a grievance may be filed by a regular employee displaced by a WIA participant who is placed in an employment activity operated with WIA funds. Also, a grievance may be filed by a WIA participant in an employment activity if the participant is displaced.

Binding Arbitration/Collective Bargaining: In accordance with 20 CFR 667.600(c)(3) of the WIA regulations, local grant recipient grievance procedures must provide WIA participants 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.

Jurisdiction: Depending on the nature of the grievance, TANF and FAE&T program applicant and recipient grievances shall be handled in accordance with the local grant recipient or the Michigan Department of Human Services (DHS) or other applicable procedures. For example, grievances regarding sanctioning or food stamp benefits will be handled by DHS, while grievances regarding programs administered by the local grant recipient will be handled by the AE of the WDB.

Wagner-Peyser: Grievances involving Wagner-Peyser Act activities must be resolved in accordance with the grievance procedures outlined in the Employment Service Manual, which is available on the One-Stop Management Information System. In addition, please refer to the Employment Service Manual for specific guidance regarding work-related complaints that are not program specific, such as: employer hour and wage violations, migrant and seasonal farm worker complaints, and other possible violations of general labor laws.

Action: Effective immediately, local grant recipients and/or AEs of the WDBs shall establish and maintain written grievance procedures in accordance with this policy issuance.

Inquiries: Questions regarding this policy issuance may be directed to the WDA at 517/335-5858.

In accordance with the Americans with Disabilities Act, the information contained in this policy will be made available in alternative format (large type, audio tape, etc.) upon request to this office.

Expiration: Continuing
PMM/PMM/rwg