

**Grievance, Complaint, and Appeal Procedures
for Kentucky's
Workforce Innovation
and Opportunity Act Programs**

Introduction

The Workforce Innovation and Opportunity Act, 29 USC 3101, et seq., requires the Commonwealth of Kentucky to establish grievance, complaint, and appeals procedures for participants and interested parties affected by the Workforce Innovation and Opportunity Act.

The procedures for filing grievances related to the following situations are included herein:

- **Appeals of denial of a request for designation as the local area.** A unit or combination of units of local government or a rural concentrated employment program grant recipient that requests but is not granted the designation of an area as a local area by the Governor may submit an appeal to the State Board pursuant to the appeal process established in the State Plan.
- **Appeals relating to determinations of infrastructure funding.** A required one-stop partner may appeal a determination regarding the portion of funds to be provided for infrastructure funding.
- **Appeals of denial or termination of eligibility as a training provider.** State and local area procedures shall establish and maintain grievance and appeal procedures for training providers whose eligibility has been terminated or denied by the Local Board, the state agency, or the one-stop operator.
- **Appeals by local area of reorganization due to failure to meet local performance accountability measures.** A local board and chief elected official for a local area that is subject to a reorganization plan due to the failure to meet local performance measures may appeal to the Governor within thirty (30) days of receipt of notice of the reorganization plan. The Governor's decision is subject to appeal to the U. S. Department of Labor Secretary.
- **Appeals by local area of intent to revoke approval of all or part of the local plan or to impose a reorganization plan due to a substantial violation.** A local area that has been found in substantial violation of WIOA title I and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur may appeal to the US Department of Labor Secretary.
- **Appeals related to testing and sanctioning of participants for substance abuse.** A participant who is subject to testing for controlled substances or who has been sanctioned by the state agency after testing positive for the use of controlled substances may file a written appeal.
- **Grievances and appeals based on complaints of discrimination.** A person who believes that they or any specific class of individuals has been or is being subjected to discrimination prohibited under WIOA on the basis of age, disability, sex, race, color, national origin, religion, political affiliation or belief, or any other protected class may file a written complaint.
- **Grievances, Complaints, and Appeals by Participants and Other Interested Parties affected by State Sub-Grantees, Subcontractors, and Local Workforce Boards.** This section outlines the grievance, complaint, and appeals process for the designated participants and other interested or affected parties.

- **Grievances, Complaints, and Appeals by Participants and Other Interested Parties affected by Statewide Workforce Investment Programs filed directly with the state.** This section outlines the grievance, complaint, and appeals process for the designated participants and other interested parties. Grievous circumstances may include but are not limited to audit disallowances and imposition of sanctions with respect to audit findings, investigations, monitoring reports, etc.
- **Appeals related to administrative regulations promulgated by the Department of Workforce Development.** A local workforce board or chief elected official may file an appeal related to administrative regulation promulgated by the Department of Workforce Development.
- **Appeals related to the rights of the Migrant and Seasonal Farm Worker Program.** This section outlines the grievance, complaint, and appeals process for issues related to Migrant and Seasonal Farm Workers.
- **Appeals related to the rights of individuals participating in Vocational Rehabilitation Services.** This section outlines the appeals process for determinations made by the Office of Vocational Rehabilitation concerning the provision, denial, reduction, suspension, or cessation of services.

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Section 1. Definitions.

- (1) “Agency” or “State Agency” means the Department of Workforce Development within the Education and Labor Cabinet.
- (2) “Applicant” means an individual who applies for services under WIOA title I.
- (3) “Cabinet” means the Education and Labor Cabinet.
- (4) “Hearing officer” means an individual who:
 - (a) Has yet to be involved in previous decisions regarding the subject matter of the appeal, complaint, or grievance.
 - (b) Knows the federal and state laws and administrative regulations governing the Workforce Innovation and Opportunity Act.
 - (c) Has trained with respect to the performance of official duties and
 - (d) Has no personal or financial interest that would conflict with the objectivity of the individual.
- (5) “Local area” means a local workforce investment area as established by an Executive Order in accordance with WIOA sec. 106.
- (6) “Local Board” means a local workforce development board established under WIOA sec. 107, to set policy for the local workforce investment system.
- (7) “One-Stop Operator” means one or more entities designated or certified under WIOA section 121(d).
- (8) “Participant” means an individual who has registered and has been determined to be eligible to participate in and who is receiving services (except for follow-up services) under a program authorized by WIOA title I. Participation commences on the first day, following the determination of eligibility, on which the individual begins receiving core, intensive training, or other services provided under WIOA title I.

(9) “State Board” means the Kentucky Workforce Innovation Board, established by Executive Order 2017-0643.

(10) “State Plan” means the current unified state plan under section 102 or a combined state plan under section 103, as approved by the US Department of Labor Secretary.

(11) “Training provider” means providers of training services as provided for in WIOA section 122.

(12) “WIOA” means the federal Workforce Innovation and Opportunity Act, 29 USC Section 3101, et seq. (Pub. L. 113-128), and its implementing regulations (20 CFR Part 675 et al.).

Section 2. Appeals of denial of a request for designation as the local area.

(1) A unit or combination of units of local government or a rural concentrated employment program grant recipient that requests but is not granted the designation of an area as a local area by the Governor may submit an appeal to the State Board. 29 U.S.C. § 3121(b)(6)

(2) The appeal shall be filed thirty (30) days after receipt of the denial of designation of an area as a local area by the Governor.

(3) The appeal shall be conducted pursuant to the administrative hearing requirements in KRS Chapter 13B.

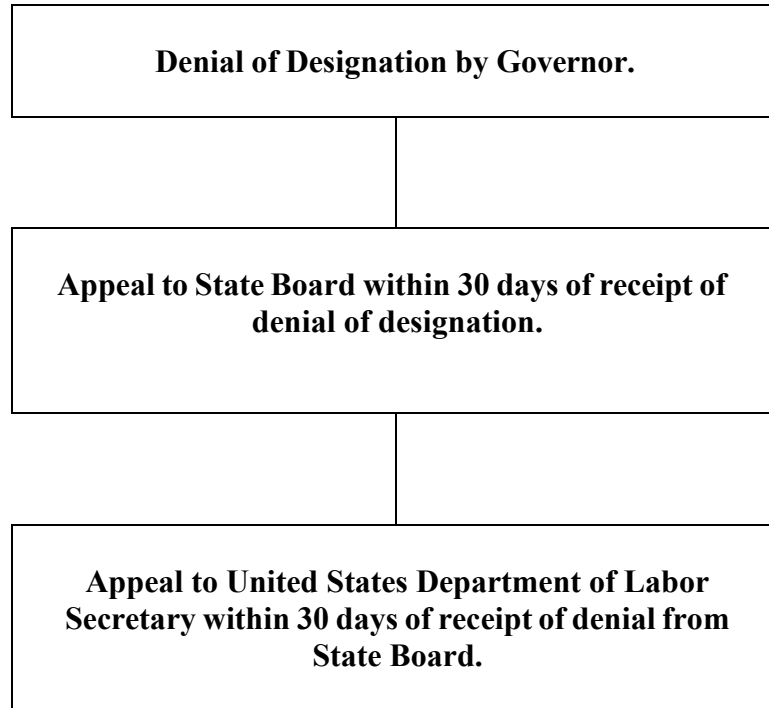
(4) A unit or combination of units of local government or a rural concentrated employment program grant recipient that is dissatisfied with the State Board's decision may request a review by the United States Department of Labor Secretary.

(5) The appeal shall be filed by thirty (30) days after receipt of written notification of the denial from the State Board. The appeal shall be submitted by certified mail, with the return receipt requested, to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall be simultaneously provided to the State Board in care of the Executive Director, Kentucky Workforce Innovation Board, 500 Mero Street, Frankfort, Kentucky, and the Department of Workforce Development, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601

- (6) On appeal, the United States Department of Labor Secretary shall consider whether:
- (i) the unit or grant recipient was not accorded procedural rights under the appeal process set forth in the State Plan or
 - (ii) the unit or grant recipient meets the requirements for designation as a local area under 29 USC § 3121, as appropriate.
- (7) The appeal shall be conducted in accordance with procedures established by the Secretary of the United States Department of Labor.
- (8) The United States Department of Labor has confirmed that there is no appeal available regarding determinations under WIOA Section 106(b)(4).

PROCESS FLOW

Appeals of denial of a request for designation as a local area (Section 2)



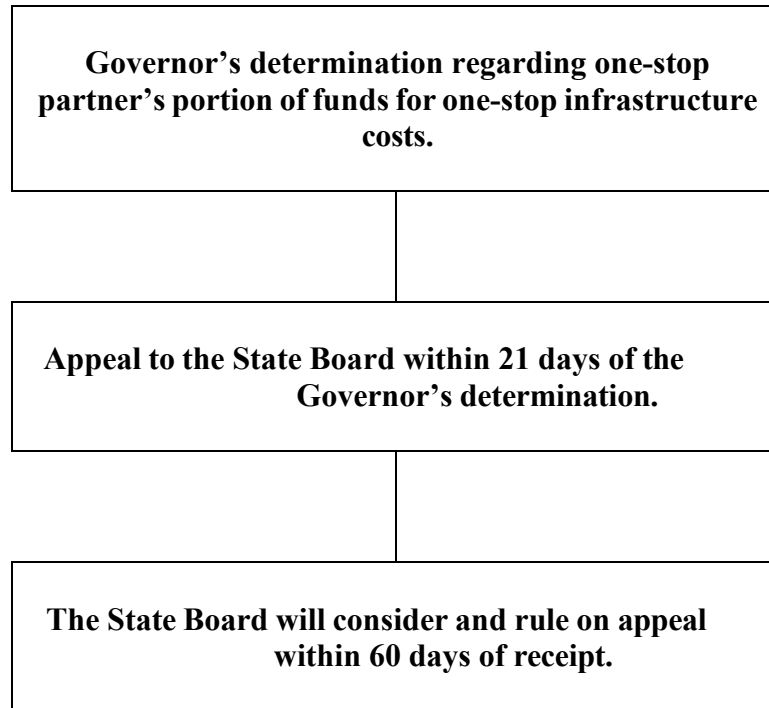
Section 3. Appeals relating to determinations for infrastructure funding.

The appeals process relating to determinations for infrastructure funding is as follows:

- (1) The Governor, through the assistance of the Kentucky Workforce Innovation Board, will make the final determination of each required partner's proportionate share of statewide infrastructure costs under the State funding mechanism.
- (2) Any required partner may appeal the Governor's determination based on a claim that:
 - (a) The Governor's determination is inconsistent with the proportionate share requirements of 20 CFR 678.735(a) or;
 - (b) The Governor's determination is inconsistent with the cost contribution caps described in 20 CFR 678.735(c) and 678.738.
- (3) The process will ensure the resolution of the appeal and the timely distribution of the funds, consistent with the requirements of 20 CFR 683.630.
- (4) An appeal must be made within twenty-one (21) days of the Governor's determination. It must be submitted formally, in writing, by registered mail no later than the 21st day from the date of receipt of the notice of denial or revocation. The appeal must be submitted to the State Board in writing.
- (5) The appeal must be signed and submitted by the chief executive officer of the one-stop partner submitting it.
- (6) The appeal must specify the circumstances and details of the appeal.
- (7) The appeal may be made only on the ground that the Governor's determination is inconsistent with proportionate share requirements in NPRM §678.735(a), the cost contribution limitations in §678.735(b), or the cost contribution caps in §678.735(c).
- (8) The State Board will consider and rule on the appeal in writing within thirty (30) days of receipt.

PROCESS FLOW

Appeals relating to determinations for infrastructure funding (Section 3)



Section 4. Appeals of denial or termination of eligibility as a training provider.

(1) Local area procedures shall establish and maintain grievance and appeal procedures for training providers whose eligibility has been terminated or denied or other action by the Local Board or one-stop operator. Systems for resolving grievances and appeals shall conform to applicable state and federal requirements and shall provide:

(a) An opportunity for an informal resolution and hearing to be completed within sixty (60) days of the filing of the grievance or complaint and

(b) An opportunity for appeal to the State Board if:

(i) No decision is reached within sixty (60) days; or

(ii) Either party is dissatisfied with the local hearing decision.

(2) The local area shall describe the grievance and appeal procedures in the local area plan.

(3) (a) A training provider may submit an appeal to the State Board if the state agency has denied, terminated, or taken other action regarding the training provider's eligibility for a substantial violation of any requirement under WIOA, failure to meet established performance levels, or intentionally supplying inaccurate information required to be furnished under WIOA.

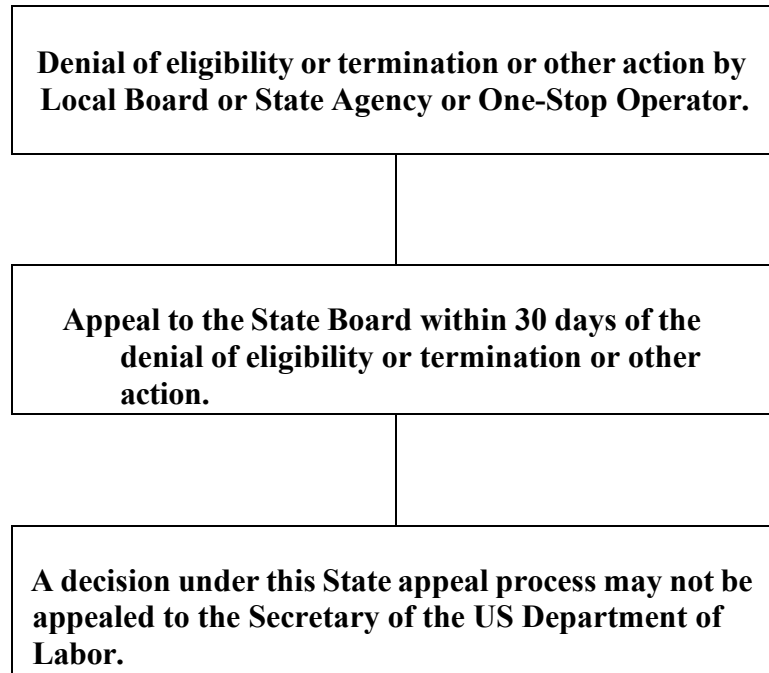
(b) An appeal under this paragraph shall be filed with the State Board by thirty (30) days after receipt of the final notice of denial, termination, or other action regarding eligibility from the state agency. The statement of appeal shall be addressed to the Kentucky Workforce Innovation Board, 500 Mero Street, 4th Floor, Frankfort, Kentucky.

(c) Under this section, an opportunity for an informal resolution and a hearing shall be conducted within sixty (60) days of the State Board's Receipt of the request for appeal.

(d) The appeal shall be conducted pursuant to the administrative hearing's requirements in K.R.S. Chapter 13B.

PROCESS FLOW

Appeals of denial or termination of eligibility as a training provider (Section 4)

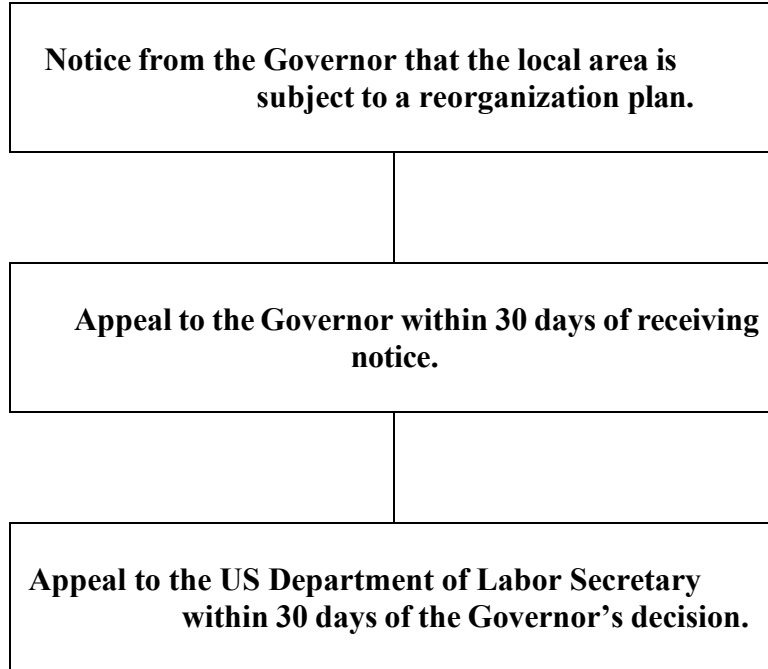


Section 5. Appeals by local area of reorganization due to failure to meet local performance accountability measures.

- (1) A local area subject to a reorganization plan due to the failure to meet local performance accountability measures pursuant to 29 USC § 3141 may appeal to the Governor to rescind or revise the reorganization plan. The appeal shall be filed within thirty (30) days of receipt of the notification. A final decision shall be issued by the Governor no later than thirty (30) days after the receipt of the appeal.
- (2) A local area may, by thirty (30) days after receiving notification from the Governor, file an appeal with the United States Department of Labor Secretary, Washington, DC 20210, Attention: ASET. A copy of the appeal shall be simultaneously provided to the Governor and the Department of Workforce Development, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601.
- (3) The United States Department of Labor Secretary shall make a final decision within thirty. (30) days of receiving the appeal.
- (4) The appeal shall be conducted in accordance with procedures established by the Secretary of the United States Department of Labor.

PROCESS FLOW

Appeals by local area of reorganization due to failure to meet performance standards (Section 5)



Section 6. Appeals by local area of intent to revoke approval of all or part of the local plan or to impose a reorganization plan due to a substantial violation.

(1) A local area found in substantial violation of WIOA title I and corrective action has not been taken shall receive from the Governor notice that either all or part of the local plan will be revoked or that a reorganization will be imposed in accordance with 29 USC § 3244.

(2) The actions taken by the Governor may be appealed to the United States Department of Labor Secretary within thirty (30) days of receipt of the Governor's notification. The Governor's actions shall not become effective until:

(a) The time for appeal has expired, or

(b) The United States Department of Labor Secretary has issued a decision.

(3) An appeal shall be submitted by certified mail, with the return receipt requested, to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor and the Department of Workforce Development, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601.

(4) The Secretary shall make a final decision within forty-five (45) days of receiving the appeal.

(5) The appeal shall be conducted in accordance with procedures established by the United States Department of Labor.

PROCESS FLOW

Appeals by local area of intent to revoke approval of all or part of a local plan or to impose a reorganization plan due to a substantial violation (Section 6)

This is notice from the Governor that the area has been found in substantial violation, and either all or part of the local plan will be revoked, or a reorganization plan will be imposed.

Appeal to the US Department of Labor Secretary within 30 days of the Terminator's notification.

Section 7. Appeals related to testing and sanctioning of participants for substance abuse.

(1) A participant who is subject to testing for controlled substances and the imposition of sanctions pursuant to 29 USC § 3241 by the state agency after testing positive for the use of controlled substances may file a written appeal no later than thirty (30) days after the date of the incident that is the subject of the appeal.

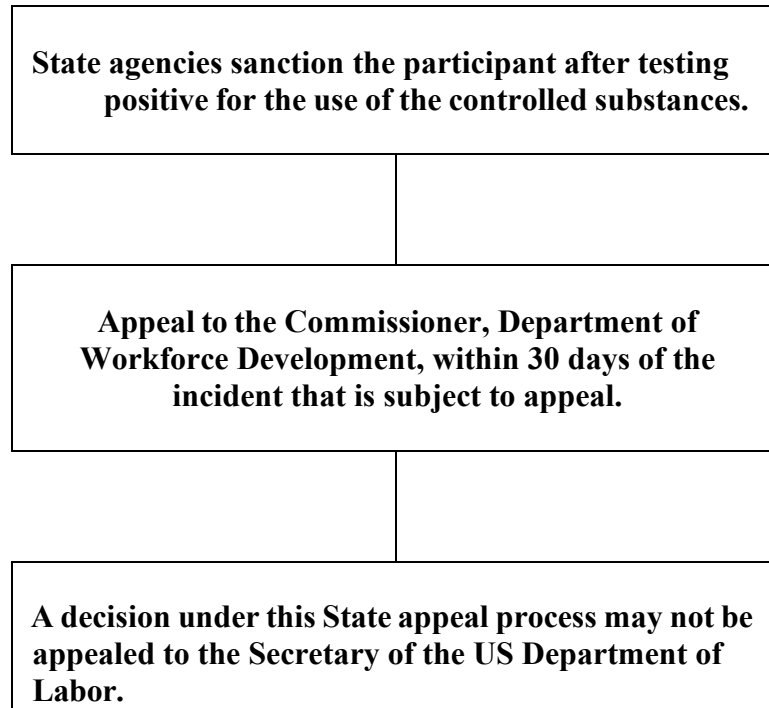
(2) The participant who wishes to file an appeal under this section shall submit a written statement to the Commissioner, Department of Workforce Development, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601. The statement shall be signed and dated by the person submitting the appeal, and shall contain:

- (a) The full name, address, and telephone number (if any) of the person submitting the appeal.
- (b) The full name and address of the person or entity against whom the complaint is made.
- (c) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation; and
- (d) The provisions of the law, regulations, or other agreements believed to have been violated.

(3) Appeals under this section shall be conducted pursuant to the administrative hearing's requirements in KRS Chapter 13B.

PROCESS FLOW

Appeals related to testing and sanctioning of participants for substance abuse (Section 7)



Section 8. Grievances and appeals based on complaints of discrimination.

(1) This section applies to applicants for WIOA participation or employment, participants or employees of any WIOA Title I-funded entity, and applicants for WIOA funding. This section also applies to participants in Kentucky's Unemployment Insurance Program.

(2) Definitions. The following definitions apply to grievances and appeals filed under this section:

(a) "Beneficiary" means an individual intended by the United States Congress to receive aid, benefits, services, or training from a recipient.

(b) "Director" means the director of the Civil Rights Center, United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, DC 20210.

(c) "Recipient" means an entity that receives financial assistance under WIOA Title I, either directly from the United States Department of Labor or through the Commonwealth of Kentucky or another recipient. "Recipient" includes, but is not limited to:

(i) State agencies that administer or are financed in whole or in part with WIOA Title I funds.

(ii) The Department of Workforce Development.

(iii) The Kentucky Workforce Innovation Board.

(iv) Local Boards.

(v) Local workforce development area grant recipients.

(vi) One-stop operators.

(vii) Service providers, including eligible training providers.

(viii) On-the-job training employers.

(ix) Job Corps contractors and center operators, excluding the operators of federally operated Job Corps centers.

(x) Outreach and admissions agencies, including Job Corps contractors, perform these functions.

(xi) One-stop partners, as described in WIOA section 121(b), to the extent that the one-stop partner participates in the one-stop delivery system.

(3) (a) A person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited under WIOA on the basis of age, disability, sex, race, color, national origin, religion, or political affiliation or belief or other protected class may file a written complaint with the recipient or with the Civil Rights Center, United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, DC 20210 within one hundred and eighty (180) days of the alleged discrimination. A representative may file the complaint. The written complaint may be a letter, email, or the US Department of Education Office of Civil Rights (OCR) Discrimination Complaint Form (Attachment A). The Director of the Civil Rights Center may extend the filing date for good cause shown.

(b) A beneficiary who believes that they have been denied participation in programs or activities financially assisted in whole or in part under WIOA Title I on the basis of citizenship may file a written complaint with the recipient or with the Civil Rights Center, United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, DC 20210 within one hundred and eighty (180) days of the alleged discrimination. A representative may file the complaint. The written complaint may be a letter, email, or the US Department of Education Office of Civil Rights (OCR) Discrimination Complaint Form (Attachment A). The Director of the Civil Rights Center may extend the filing date for good cause shown.

(4) A complaint shall contain the following information:

(a) The full name, address, email address (if available), and telephone number (or message number) of the person making the complaint (the Complainant).

(b) The full name and address of the entity or individual against whom the complaint is made (respondent);

(c) A description of the Complainant's allegations in sufficient detail to allow determinations

A decision will be made regarding jurisdiction, timeliness, and apparent merit (whether the allegations, if true, would violate any nondiscrimination and equal opportunity provisions under WIOA).

(d) The complaint shall be signed and dated by the Complainant or the Complainant's authorized representative.

(5) The recipient shall forward a copy of a complaint filed with the recipient to the Equal Opportunity (EO) officer of the Commissioner, Department of Workforce Development, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601. Suppose the complaint is filed with the Civil Rights Center (CRC). In that case, the Complainant may complete and submit the CRC's Complaint Information and Privacy Act Consent Form, which may be obtained from the recipient's EO Officer or the Civil Rights Center at the United States Department of Labor, Room N-4123, 200 Constitution Avenue, N.W., Washington, DC 20210.

(6) The local board shall designate an EO officer who is responsible for receiving, investigating, and offering resolutions of complaints and for assuring all WIOA Title I applicants are advised of their rights. 29 CFR § 38.28. Service providers shall follow the procedures established within the local workforce investment area. The local board must establish grievance procedures that shall contain the following minimum requirements:

(a) Upon receipt of a complaint, the recipient shall provide written acknowledgment to the Complainant that the recipient has received the complaint and shall notify the Complainant of the right to be represented in the complaint process.

(b) The recipient shall, after that, provide a written statement of the issue(s) to the Complainant that includes the following:

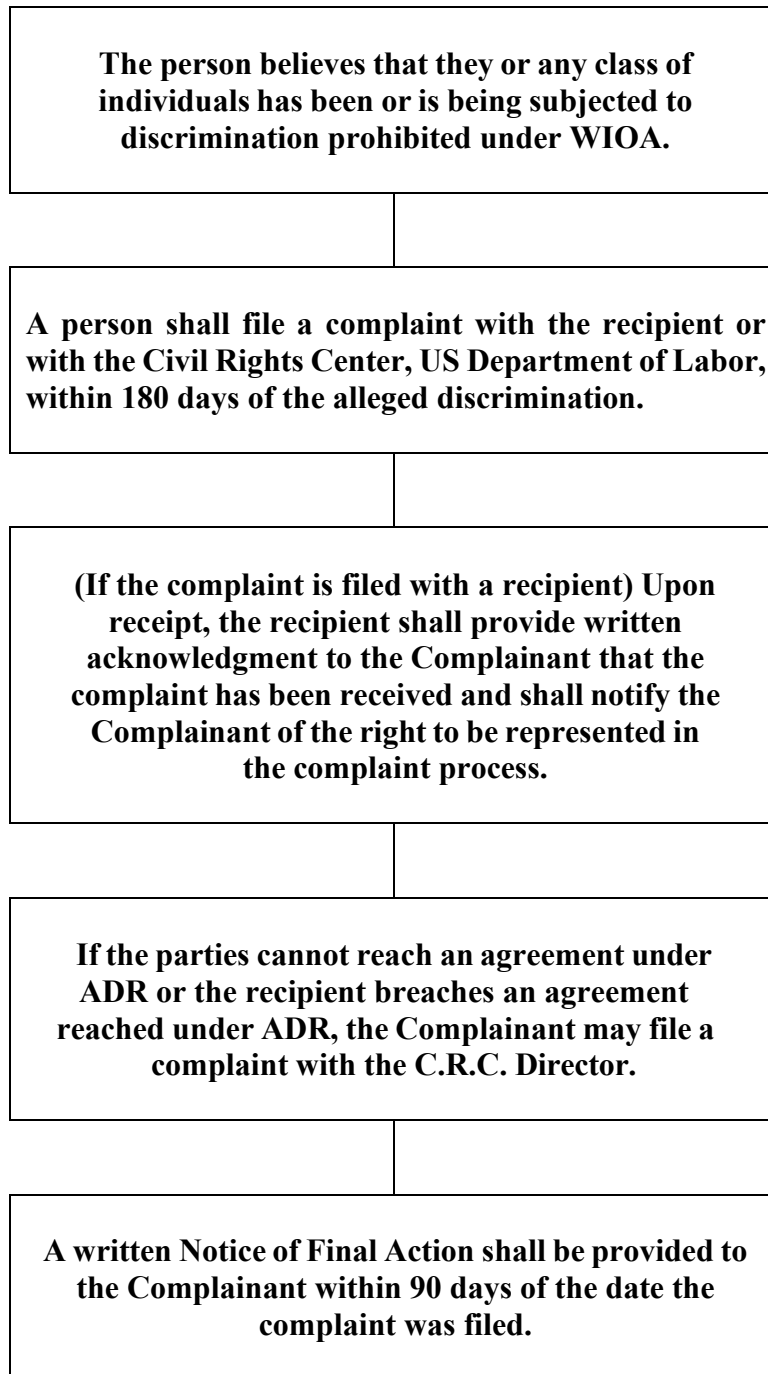
(i) A list of the issues raised in the complaint, and

(ii) For each such issue, a statement about whether the recipient accepts the issue for investigation or rejects the issue and the reasons for each rejection.

(c) A period for fact-finding or investigation of the circumstances underlying all complaints.

PROCESS FLOW

Grievances and appeals based on complaints of discrimination (Section 8)





**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the US Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or email instead of this form, but the letter or email must include the information in items 1-15 of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An online, fillable version of this form, which can be submitted electronically, can be found at:
<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form, please read all information in the enclosed packet, including Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information, and the Consent Form.

If you have questions about civil rights or how to file a complaint, you may contact OCR at 800-421-3481, 800-877-8339 (TTY), OCR@ed.gov, or the enforcement office that serves your state or territory. Contact information for enforcement offices can be found at <https://ocrcas.ed.gov/contact-ocr>.

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800- USA-LEARN (1- 800-872-5327) (TTY: 1-800-877-8339) or email us at Ed.Language.Assistance@ed.gov. Suppose you are a person with a disability. In that case, you may request disability-related assistance by contacting OCR at 800-421-3481, 800- 877-8339 (TTY), OCR@ed.gov, or by calling the enforcement office that serves your state or territory. Contact information for enforcement offices can be found at: <https://ocrcas.ed.gov/contact-ocr>. To request this document in an alternate format, such as Braille or large print, please get in touch with the Department at 202-260-0852 or om_eeos@ed.gov.

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Complaint Form, Consent Form, and Complaint Processing Procedures

1. Name of person filing this complaint:

Last Name:_____ **First Name:**_____ **Address:**

City:_____ **State:**_____ **Zip Code:**_____

Primary number:_____ **Alternate number:**_____

Email Address: _____

2. Name of person discriminated against (if **other** than person filing). If the person discriminated against is age 18 or older, we will need that person's signature on this complaint form and the consent/release form before we can proceed with this complaint. Suppose the person is a minor, and you do not have the legal authority to file a complaint on the student's behalf. In that case, the signature of the child's parent, guardian, or other authorized legal representative is required.

Last Name:_____ **First Name:**_____ **Address:**

City:_____ **State:**_____ **Zip Code:**_____ **Primary**

Phone:_____ **Alternative Phone:**_____ **Email Address:** __

3. OCR investigates discrimination complaints against schools, colleges and universities, institutions, and agencies that receive funds or other forms of financial assistance from the US Department of Education and against public educational entities and libraries that are subject to the provisions of Title II of the Americans with Disabilities Act. Please identify the institution or agency that engaged in the alleged discrimination. If we cannot accept your complaint, we will attempt to refer it to the appropriate agency and will notify you of that fact.

Name of Institution: _____

Address: _____

City:_____ **State:**_____ **Zip Code:**_____

Department/School: _____

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, or age. The regulations also ban retaliation against persons who assert the right to be free from discrimination. Please note the following:

- Discrimination based on race, color, and national origin includes failure to provide meaningful access to English learners and limited English-proficient parents and guardians, as well as discrimination based on shared ancestry or ethnic characteristics or based on citizenship in a country with a dominant

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Complaint Form, Consent Form, and Complaint Processing Procedures

Discrimination based on race, color, and national origin also includes discrimination, including harassment, because you and/or another individual are, for example, Jewish, Muslim, Arab, Hindu, or Sikh, or based on other ethnic and religious characteristics. For example, individuals who have been subjected to ethnic slurs (such as antisemitic or anti-Muslim harassment), harassed for how they look, dress, or speak in ways related to their ethnic background (such as skin color, religious attire, or language spoken); or stereotyped based on their perceived ethnic characteristics.

- Discrimination based on sex includes discrimination based on sex stereotypes, pregnancy or related conditions, sexual orientation, and gender identity, as well as rules about parental, family, or marital status that treat people differently based on sex.
- Discrimination based on disability includes discrimination against individuals who have a physical or mental impairment that substantially limits a major life activity, as well as individuals who have a record of or are regarded as having a disability.
- Discrimination based on age does not limit protection against discrimination to a certain age group (e.g., people over 40); however, there are a variety of exceptions to the relevant Federal law that may permit age to be taken into account.
- Retaliation refers to actions taken for the purpose of interfering with any rights under the laws enforced by OCR or because you made a complaint, testified, or participated in any manner in an OCR proceeding.

Please indicate the basis of your complaint:

☐

Discrimination **based on race (specify)**

☐

Discrimination **based on color (specify)**

☐

Discrimination **based on national origin (specify)**

☐

Discrimination **based on sex (specify)**

☐

Discrimination **based on disability (specify)**

☐

Discrimination **based on age (specify)**

☐

Retaliation because you filed a complaint or otherwise asserted rights under laws enforced by OCR (specify)

☐

Violation of the Boy Scouts of America Equal Access Act (specify)

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved, and why you believe the discrimination was because of race, disability, age, sex, etc. Also, please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

6. Do you have documents or written information that you think will help us to understand your complaint?
- ☐ No
☐ Yes

If yes, please describe the documents or written information you have.

If OCR investigates your complaint, we may ask you to provide us with the items you describe above.

7. What is the most **recent date** you were discriminated against?

Date: _____

8. If this date is **more than 180 days ago**, you may request a waiver of the filing requirement.

☐

I am requesting a waiver of the 180-day time frame for filing this complaint.

Please explain why you did not file your complaint within 180 days.

9. Have you complained about the allegations that you raised in this complaint to your school, institution, or another organization or agency?

☐ YES

☐ NO

If yes, have you complained about the allegations that you raise in this complaint by:

☐

Filing an internal complaint or appeal with your school or institution?
Participating in your school or institution's grievance procedures?

☐

Participating in a due process hearing either at your school or institution or through another organization or government agency?

If you answered **yes to any of the above questions**, please describe the allegations that you raised in an internal complaint or appeal, through your school or institution's grievance procedures, or in a due process hearing, and identify the date you complained about the allegations and where you made the complaint, and tell us the status of the complaint, appeal, grievance procedures, or due process hearing. If possible, please provide us with a copy of your complaint, grievance appeal, or due process request and, if completed, the decision on the matter.

10. If the allegations contained in this complaint have been filed with any other federal, state, or local civil rights agency or any federal or state court, please provide details and dates. We will determine whether it is appropriate to investigate your complaint based on the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: _____

Date Filed: _____

Case Number or Reference: _____

Results of Investigation/Findings by Agency or Court:

11. You do not need to have a lawyer to file a complaint with OCR; however, if you do have a lawyer, OCR staff are required to communicate directly with your lawyer. If you have a lawyer representing you in this matter, please provide the lawyer's contact information.

Last Name: _____ **First Name:** _____

Telephone: _____ **Email:** _____

12. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we can reach you. This information **is not required**, but it will be helpful to us.

Last Name: _____ **First Name:** _____

Telephone: _____ **Email:** _____

13. **Option to Participate in OCR's Early Mediation Process**

OCR provides an early mediation process, which allows you and the recipient institution to voluntarily resolve your complaint soon after you file it with OCR.

Mediation is a form of complaint resolution that OCR offers as an alternative to its investigative process. Mediation is an informal process in which a staff member from OCR who is trained in mediation assists the parties in reaching a negotiated resolution of the complaint. The mediator does not decide who is right or wrong and does not have the authority to impose a settlement on the parties. Instead, the mediator helps the parties to find a mutually acceptable resolution to your complaint. Mediation is a strictly voluntary process. If either party does not want to participate in mediation, OCR will address the complaint through its regular processes.

If you are interested in participating in the early mediation process, you must check the box below. Suppose you indicate your interest in early mediation by checking the box below, **and** OCR determines that your complaint is appropriate for this process. In that case, OCR will contact you and the recipient institution to offer this resolution option. If the recipient agrees to participate in early mediation, OCR will work with you and the recipient to achieve a mutually agreeable resolution of your complaint. If the recipient does not wish to participate in early mediation, OCR will proceed with its regular processing of your complaint. ***Suppose you do not indicate your interest in early mediation by checking the box below. In that case, early mediation will not be offered to you, and OCR will proceed with its regular processing of your complaint.***

I am interested in participating in early mediation (Please check box):

☐

NOTE: You **MUST** submit a signed Consent Form to OCR if you want to participate in early mediation.

14. What would you like the institution to do as a result of your complaint
— what remedy are you seeking?

15. We cannot accept your complaint if it has not been signed. Please
sign and date your complaint below.

(Date)

(Signature)

(Date)

(Signature of person in Item 2)

Please mail or email the completed and signed Discrimination Complaint Form, your signed
consent form, and copies of any written material or other documents you believe will help
OCR understand your complaint to the OCR Enforcement Office responsible for the state
where the institution or entity about which you are complaining is located. You can locate
the mailing information for the correct enforcement office on OCR's website at
<https://ocrcas.ed.gov/contact-ocr>.

**CONSENT FORM - FOR DISCLOSING NAME AND OTHER PERSONAL INFORMATION
CONTAINED IN THE DISCRIMINATION COMPLAINT FORM TO OTHERS**

(Please print or type except for the signature line)

Your Name: _____

Name of School or Other Institution That You Have Filed This Complaint Against: _____

- The purpose of this consent form is for the Office for Civil Rights (OCR) to request your consent to disclose your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.
- For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.
- If you do not consent to OCR disclosing your name or other personal information, OCR may decide to close your complaint if OCR determines it is necessary to disclose such information in order to determine whether the school discriminated against you.

NOTE: If you file a complaint with OCR, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution, the date your complaint was filed, the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint.

NOTE: OCR requires you to respond to its requests for information. Failure to cooperate with OCR's investigation and resolution activities could result in the closure of your complaint.

Please sign section A or section B (but not both) and return to OCR:

- If you filed the complaint on your behalf, you should sign this form.
 - If you filed the complaint on behalf of another specific person, that other person should sign this form.
- EXCEPTION:** If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.
- If you filed the complaint on behalf of a class of people rather than any specific person, you should sign the form.

A. I give OCR my consent to disclose my name (and that of my minor child/ward on whose behalf the complaint is filed) and other personal information contained in the Discrimination Complaint Form to others for OCR's investigation of and enforcement activities related to the Discrimination Complaint Form.

Signature

Date

OR

B. I do not give OCR my consent to disclose my name (and that of my minor child/ward on whose behalf the complaint is filed) nor other personal information contained in the Discrimination Complaint Form to others for OCR's investigation of and enforcement activities related to, the Discrimination Complaint Form. I understand that OCR may have to close my complaint.

Signature

Date

I declare under penalty of perjury that it is true and correct that I am the person named above, and if a parent or legal guardian files the complaint on behalf of a minor child/individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, that I am that person's parent or legal guardian. This declaration only provides consent for the disclosure of the identity of the persons (and other individually identifiable information about them contained in the Discrimination Complaint Form). It does not extend to any of the claims filed in the complaint.

Updated October 30, 2023

Excerpt from the Online Interactive Complaint Form

Race / Color / National Origin / Ethnicity / Shared Ancestry

Discrimination based on national origin includes discrimination based on the country, world region, or place where a person or their ancestors come from; a person's limited English proficiency or English learner status; and a person's actual or perceived shared ancestry or ethnic characteristics, including membership in a religion that may be perceived to exhibit such characteristics (e.g., Hindu, Jewish, Muslim, and Sikh students). For more information about race, color, and national origin discrimination, please visit www.ed.gov/ocr/frontpage/pro-students/race-origin-pr.html.

Sex

Discrimination based on sex includes discrimination based on sex stereotypes, pregnancy or related conditions, sexual orientation, and gender identity. Discrimination based on sex also encompasses rules about parental, family, or marital status that treat people differently based on sex. For more information about sex discrimination, please visit <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

Disability

A person with a disability is defined as any person who (i) has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment. Whether a person has a disability is determined without considering mitigating measures. For more information about disability discrimination, please visit www.ed.gov/policy/rights/guid/ocr/disability.html.

Section 9. Grievances, Complaints, and Appeals by Participants and Other Interested Parties affected by State Sub-Grantees, Subcontractors, and Local Boards.

This section does not apply to complaints of discrimination, fraud, or criminal activity under WIOA Section 188 or 20 CFR Part 683.

(1) State sub-grantee, subcontractor, and local area procedures.

(a) A state sub-grantee, subcontractor, and local area shall establish and maintain a system for resolving grievances, complaints, and appeals by participants and other interested parties affected by the local workforce investment system, including one-stop partners and service providers. At a minimum, the sub-grantees, state subcontractor, and local area's procedure shall provide the following:

1. A participant or other interested party affected by the statewide workforce investment system shall have the right to file a complaint with the state sub-grantee, subcontractor, or local area within thirty (30) days of the alleged occurrence. The complaint must be in writing utilizing the US Department of Labor Complaint/Apparent violation Form 842 (Attachment B) to be investigated by the State Employment Service Complaint System.

2. An opportunity for an informal resolution and hearing to be completed within sixty (60) days of the filing of the grievance or complaint, which may be extended by agreement of the parties.

3. A process to allow an individual alleging a labor standards violation to submit the grievance to binding arbitration procedure if a collective bargaining agreement covering the parties to the grievance provides for binding arbitration.

and

4. An opportunity for appeal to the state agency if:

a. No decision is reached within sixty (60) days, and no agreement to extend has been reached,
or

(d) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint shall include an alternative dispute resolution (ADR) method.

The Complainant shall be given the choice of whether to use ADR or the customary process. If the recipient breaches an agreement reached under ADR, the Complainant may file a discrimination complaint with the CRC. Director within thirty (30) days of the date on which the Complainant learns of the alleged breach. If the parties cannot reach an agreement under ADR, the Complainant may file a discrimination complaint with the C.R.C. Director.

(e) A written Notice of Final Action shall be provided to the Complainant within ninety (90) days of the date on which the complaint was filed. The Notice of Final Action shall include, for each issue raised in the complaint, a statement of either (i) the recipient's decision on the issue and an explanation of the reasons underlying the decision or (ii) a description of the way the parties resolved the issue. The Notice of Final Action shall include notice that the Complainant has a right to file a complaint with CRC within thirty (30) days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

(f) The EO officer shall notify the Complainant in writing immediately if it is determined that the local workforce area does not have jurisdiction over a complaint. The notification shall include the basis for the determination as well as a statement of the Complainant's right to file a written complaint with the Civil Rights Center within thirty (30) days of the date on which the Complainant receives the notice.

(g) The Complainant shall be notified of the right to file a complaint with the Civil Rights Center if the local workforce investment board representative still needs to complete processing the complaint or if no resolution has been offered within ninety days following receipt of the complaint. The Complainant has the right to file a complaint with the Civil Rights Center within thirty (30) days of the expiration of the ninety days.

(7) The recipient shall maintain records of complaints for at least three years from the date the

(b) Either party is dissatisfied with the state sub-grantee, subcontractor, or local area hearing decision.

(c) The state sub-grantee, subcontractor, and local area shall provide information about its grievance procedure to participants and other interested parties.

(2) State procedures.

(a) Appeals from decisions of the state-subgrantee, subcontractor, or local area.

1. The participant or other interested party may appeal the state-subgrantee, subcontractor, or local area's hearing decision by submitting a written request for appeal to the Department of Workforce Development, Attention: Commissioner, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601 within ten (10) business days of receipt of the hearing decision or fifteen.

(15) business days from the date the Complainant should have received the hearing decision.

2. The state agency shall investigate and issue a decision within fifteen (15) business days of receipt of the written request for appeal.

(b) 1. The Complainant may appeal the state agency's decision by submitting a written request for appeal to the Office of the Secretary, Education and Labor Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, within ten (10) days of the date of receipt of the state agency's decision or within ten (10) days of the date the state agency should have issued a decision. The request for appeal shall:

a. Indicate the name, address, and telephone number of the Complainant and

b. Include the reason for the appeal.

2. The hearing shall be conducted pursuant to KRS 13B.080 and KRS 13B.090.

3. A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General or an impartial hearing officer appointed by the Cabinet.

4. The hearing officer's recommended order shall be mailed, postage prepaid, to all parties.

And their attorneys of record within thirty (30) business days of the hearing, which may be extended by agreement of the parties.

5. Exceptions. The parties may file exceptions within fifteen (5) business days of receiving the recommended order.

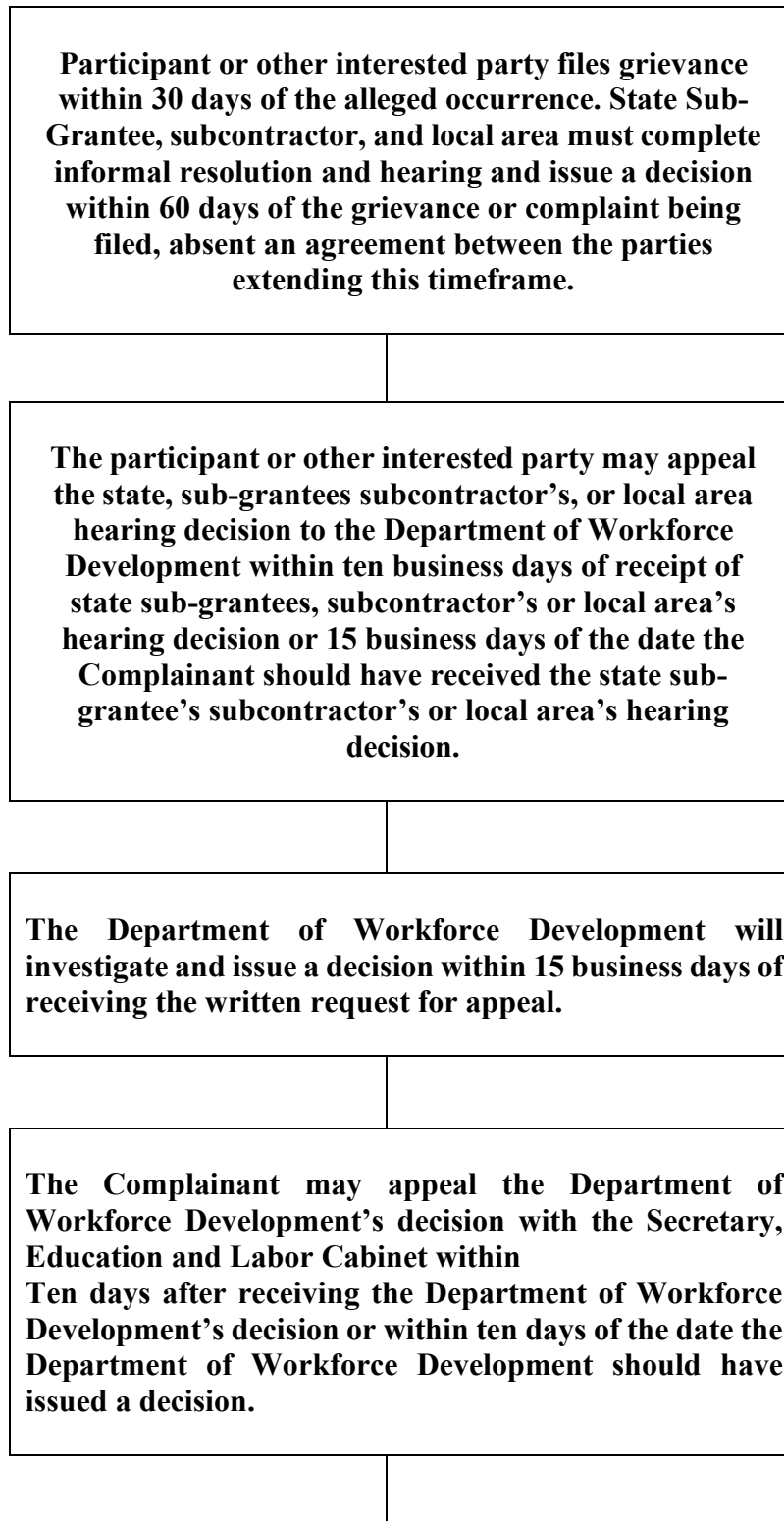
6. The Secretary of the Education and Labor Cabinet shall consider the record and recommended order, any exceptions filed, and issue an order upon the matter. The Secretary may remand the matter to the hearing officer, adopt the hearing officer's recommended order as the final order, or issue his final order within forty-five (45) business days from the hearing officer's issuance of the recommended order.

7. Either party may appeal the final order of the Secretary of the Education and Labor Cabinet to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. The appeal shall be filed within sixty (60) days of the receipt of the final order and must be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and the Regional Administrator, US Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.

8. Suppose no decision has been reached within sixty (60) days of receipt of the request for approval of a local-level grievance, and there was no agreement between the parties to extend this timeframe. In that case, either party may appeal to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. The appeal shall be filed within 120 days of the filing of the grievance with the state or the filing of the appeal of a local grievance with the state. The appeal must be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and the Regional Administrator, US Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.

PROCESS FLOW

Grievances, Complaints, and Appeals by Participants and Other Interested Parties affected by State Sub-Grantees, Subcontractors, and Local Workforce Investment System Boards (Section 9)



The Hearing Officer shall issue a written recommended order within 30 business days of the hearing, absent an agreement between the parties extending this timeframe.

The Secretary, Education, and Labor Cabinet shall issue a final order within 45 business days from the issuance of the recommended order.

Either party may appeal the Secretary, Education, and Labor Cabinet's final order to the Secretary, US Department of Labor, within 60 days of receipt of the final order.



For Official Use Only **Complaint/Apparent Violation Form¹**

Complaint/Apparent Violation No.		Date Received	
Part I. Contact Information²		Respondent's Information³	
1. Name of Complainant/(Last, First, Middle Initial) ⁴		4. Name of Person, Company, or Agency the Complaint is Made Against	
2a. Permanent Address (No., St., City, State, ZIP Code)		5. Name of Employer (if different from Part I #4 above) /One-Stop Office	
b. Temporary Address (if Appropriate)		6. Address of Employer/One-Stop Office	
3a. Permanent Telephone () -	b. Temporary Telephone () -	7. Telephone Number of Employer/One-Stop Office () -	
8a. Description of Complaint or Apparent Violation (If additional space is needed, use separate sheet(s) of paper and attach to this form)			

8b. ☐ I hereby give authorization to act on my behalf regarding this complaint. Phone #: _____ Address: _____

I CERTIFY that the information furnished is true and accurately stated to the best of my knowledge. I AUTHORIZE the disclosure of

Certification of this information to other enforcement agencies for the proper investigation of my complaint. I UNDERSTAND that my identity will be kept confidential to the maximum extent possible, consistent with applicable law and that my complaint will be fairly determined.

9. Signature of Complainant ⁵	10. Date Signed / /
--	------------------------

¹ For information regarding complaints that are covered through the Employment Service and Employment-Related Law Complaint System, see 20 CFR 658 Subpart E.

² If the Complaint/Apparent Violation Form is used to submit an Apparent Violation, the name of the Complainant is not necessary and may remain anonymous. Parts 2a and 2b also do not need to be filled out if the form is used for an Apparent Violation.

³ For a definition of "Respondent," see 20 CFR 651.10.

⁴ Pursuant to 658.400(d), "A complainant may designate an individual to act as his/her representative." If the Complainant has a designated representative, the name and contact information of the designated representative must be provided in 8b.

⁵ No signature is required in Part 9 if this form is submitted as an Apparent Violation. If the form is submitted as a complaint and a designated representative acts on behalf of the Complainant, the designated representative must sign it here.

1. Migrant or Seasonal Farmworker? ☐ Yes ☐ No 2. Complaint or Apparent Violation Employment Service Related ("X" Appropriate Box(es)) ☐ Complaint against the Employer ☐ Apparent violation involving the Employer ☐ Complaint against the Local Employment Service Office ☐ Apparent violation involving the Employment Service Office 2a. Job Order No, if available: _____ 3. Complaint or Apparent Violation Employment-Related Law: ☐ Yes ☐ No	4. Issue(s) involved in Complaint or Apparent Violation ("X" Appropriate Box(es)): ☐ Wage Related ☐ Housing ☐ Child Labor ☐ Pesticides ☐ Health/Safety ☐ Discrimination ☐ Transportation ☐ Trafficking ☐ Sexual harassment/coercion/assault ☐ Other (Specify) _____	5. If the employer is an H-2A/Criteria Employer, is the Complainant a: ("X" Appropriate Box): ☐ US Worker ☐ H-2A Worker
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[illegible]

Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Obligation to reply is required to obtain or retain benefits (44 USC 5301). The public reporting burden for this collection is estimated to average 2 hours and 30 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the US Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

Section 10. Grievances, Complaints, and Appeals by Participants and Other Interested Parties affected by Statewide Workforce Investment Programs filed directly with the state.

This section does not apply to complaints of discrimination, fraud, or criminal activity under WIOA Section 188 or 20 CFR Part 683. This section may include but is not limited to complaints regarding audit disallowances and the imposition of sanctions with respect to audit findings, investigations, monitoring reports, etc.

(1) A participant or other interested party affected by the statewide workforce investment system shall have the right to file a complaint with the state agency within thirty (30) days of the alleged occurrence. The Complainant shall submit the complaint to the Secretary, Education and Labor Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601. The complaint shall contain:

(a) The full name, address, and telephone number of the person or agency filing the complaint; and

(b) A clear and concise statement of the facts, including pertinent dates, constituting the grievous action.

(2) The Complainant shall have the opportunity for an informal resolution and a hearing to be completed within sixty (60) days of the filing of the grievance or complaint, which may be extended by agreement of the parties. An individual alleging a labor standards violation is allowed to submit the grievance to a binding arbitration process if a collective bargaining agreement covering the parties to the grievance provides for binding arbitration.

(3) The hearing shall be conducted pursuant to KRS 13B.080 and KRS 13B.090.

(4) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General or an impartial hearing officer appointed by the Cabinet.

(5) The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record within thirty (30) business days of the hearing, which may be extended by agreement of the parties.

(6) Exceptions. The parties shall be granted the right to file exceptions within fifteen (15) business days of receipt of the recommended order.

(7) The Secretary of the Education and Labor Cabinet shall consider the record, recommended order, and any exceptions filed and issue an order on the matter. The Secretary may remand the matter to the hearing officer, adopt the hearing officer's report and recommended order as the final order, or issue his final order within forty-five (45) business days from the hearing officer's issuance of the recommended order.

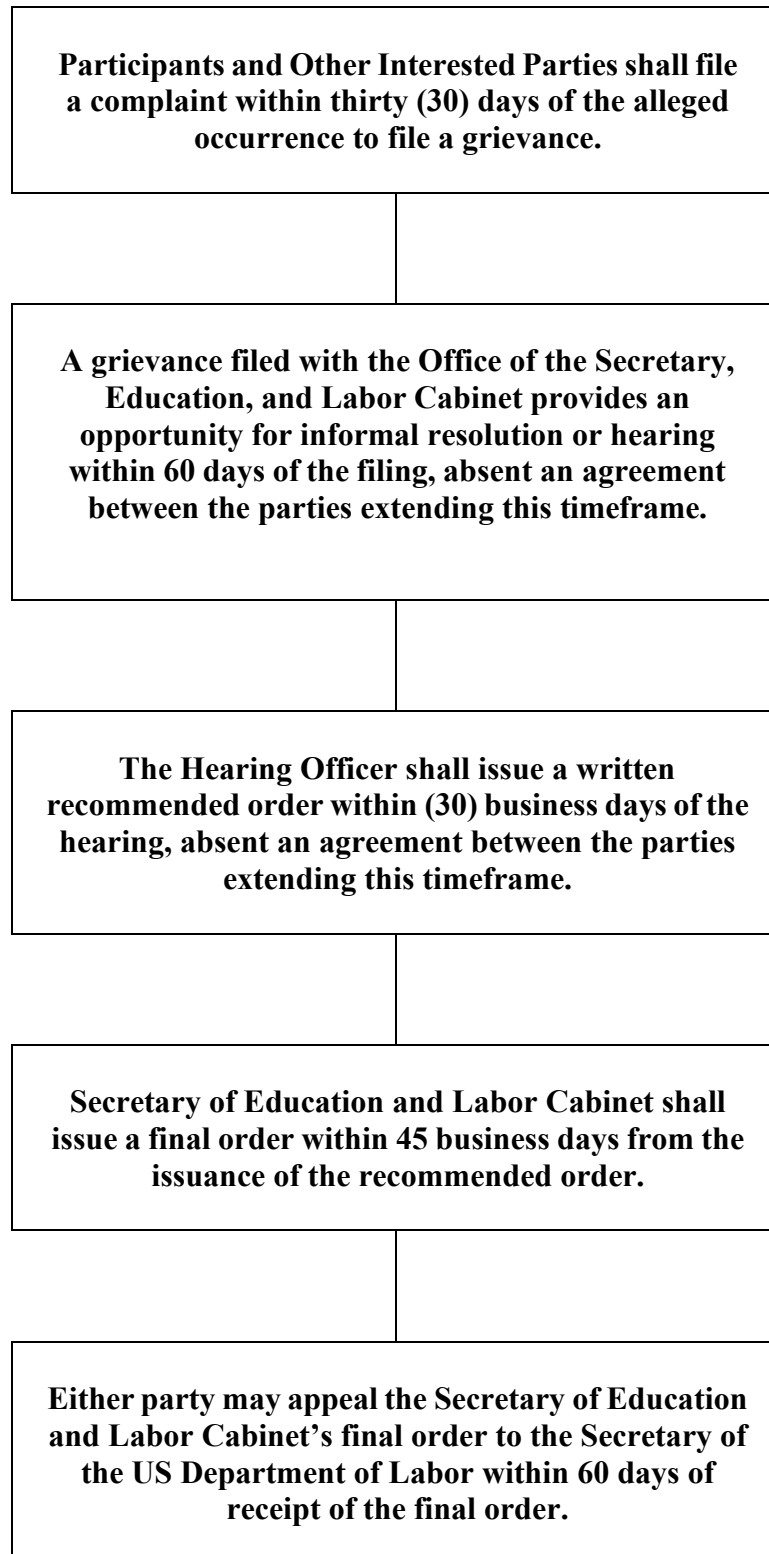
(8) Either party may appeal the final order of the Secretary of the Education and Labor Cabinet to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. The appeal shall be filed within sixty (60) days of the receipt of the final order and must be submitted by certified mail, return receipt requested. A copy of the appeal shall be simultaneously provided to the opposing party and the Regional Administrator, US Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.

(9) Suppose no decision has been reached within sixty (60) days of filing the grievance or complaint, and there was no agreement between the parties to extend this timeframe. In that case, either party may appeal to the Secretary, United States Department of Labor, Washington, DC 20210, Attention: ASET. The appeal shall be filed within 120 days of the filing of the grievance with the state. The appeal shall be submitted by certified mail, and a return receipt will be requested. A copy of the appeal shall be simultaneously provided to the opposing party and the Regional Administrator, United States Department of Labor, Employment and Training Administration, 61 Forsythe Street SW, Room 6M12, Atlanta, Georgia 30303.

(11) The state agency may remand a grievance or complaint related to a local WIOA program for resolution at the local level.

PROCESS FLOW

Grievances, Complaints, and Appeals by Participants and Other Interested Parties affected by Statewide Workforce Investment Programs filed directly to state agencies (Section 10)



Section 11. Appeals related to administrative regulations promulgated by the Department of Workforce Development.

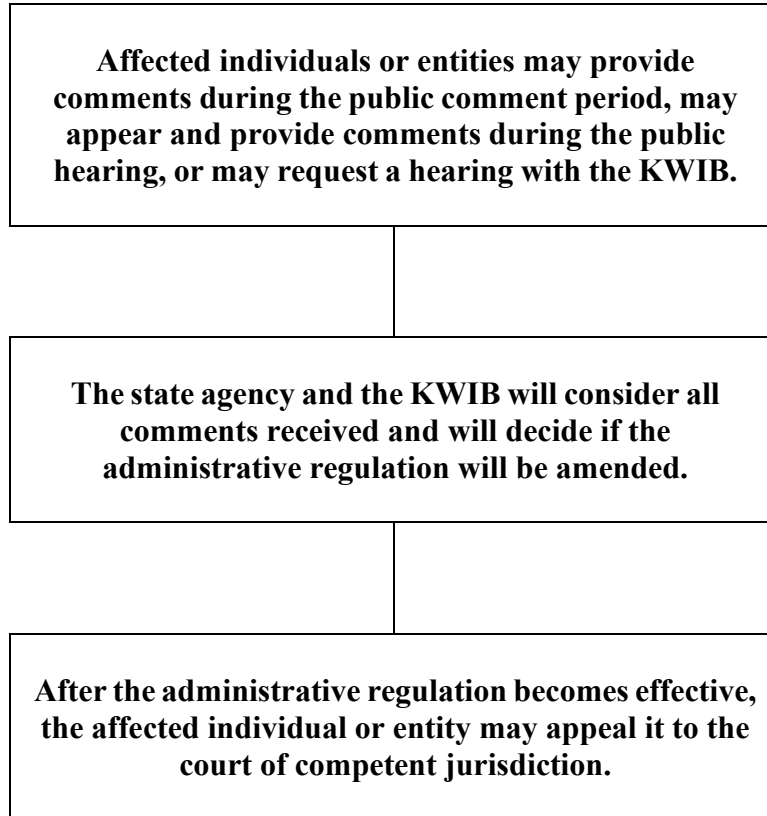
(1) The Department of Workforce Development will promulgate administrative regulations in accordance with KRS Chapter 13A. As such, there will be a public comment period and a public hearing during which affected individuals or entities may provide comments. In addition to this, an entity impacted by the administrative regulation may request a hearing with the Kentucky Workforce Innovation Board (“KWIB”) prior to the promulgation of the proposed regulation regarding the entity’s concerns with the administrative regulation. The KWIB will take into consideration all issues raised at either the hearing or any written comments received and will decide whether to amend the proposed administrative regulation. The requirements of KRS 13B shall not apply to the hearing rights provided in this section.

(2) After the administrative regulation process has been completed and the administrative regulation has taken effect, no further hearings on the administrative regulation will be granted.

(3) Any appeal of an administrative regulation must be filed in the court of competent jurisdiction.

PROCESS FLOW

Appeals related to administrative regulations promulgated by the Department of Workforce Development (Section 11)



Section 12. Complaints, Hearings, and Appeals regarding the Wagner-Peyser Act Employment Service (ES)

The Career Development Office (“CDO”), as the State Workforce Agency, shall follow the guidelines predetermined by the US Department of Labor (“DOL”) when a complaint is submitted through the Wagner-Peyser Act Employment Service complaint system.

Centralized Complaint Log

The ES Office Manager and the State Administrator must ensure a central complaint log is maintained, listing all complaints and apparent violations observed or taken by ES Staff, ES offices, CDO, or SWA. The log should, at minimum, include the name of the Complainant (except in cases of apparent violations); the name of the respondent or agency; the date the complaint was filed or the date the apparent violation was observed or identified; whether the complaint is made by or on behalf of a Migrant or Seasonal Farmworker (MSFW) or if the apparent violation affects an MSFW; whether the complaint or apparent violation is concerning employment-related law or the employment services regulation; and any actions taken by the CDO, including documents sent or received with dates of any actions; information regarding whether the complaint or apparent violation was resolved, formally or informally and follow-up contacts when complaints are referred.

The CDO must ensure that any action taken by the CSR or ES office manager, including referral of MSFW-related complaints, is thoroughly documented and contains all relevant information with notations regarding the type of complaint, a copy of the original [ETA Form 8429](#), any related reports or correspondence, a list of actions, and a record of relevant phone calls or correspondence relating to it.

Within one month after the end of the calendar quarter, each ES office manager must transmit an electronic copy of the Complaint System log to the State Monitor Advocate. These logs must also be made available to the Department of Labor if requested.

When an MSFW submits an unresolved complaint, the CSR must follow up monthly on the processing of the complaint and must inform the Complainant of the status of the complaint. No follow-up with the Complainant is required for non-MSFW complaints.

Complaint System Poster Publication—Each One-Stop Center will prominently display the E.T.A.-approved Complaint System Poster in English and Spanish. The CDO will publish digital versions of the posters on the ES main website per TEN 8-23.

A Complaint System Representative (C.S.R.) is a trained ES staff individual who is responsible for processing complaints. 20 CFR 651.10 “Complaint System Representative”

Each ES Office must have a trained CSR and a trained backup CSR to ensure appropriate staff is available during regular office hours to receive complaints. Complaints can be accepted in any one-stop center, the CDO, or elsewhere by ES staff. The CSR must log complaints. Any ES staff member can receive a complaint or a report of apparent violation. All complaints and apparent violations must be logged on the ETA Form 8429 and provided to the ES Office Manager or CSR to be logged and investigated.

Filing Complaints:

Whenever an individual files a complaint with the Employment Services (“ES”) office, CDO or ES

office staff, or outreach staff, the individual receiving the complaint must offer to explain the operation of the Complaint System and offer to take the complaint in writing. The staff shall comply with 20 CFR Sec. 658.411 by:

- 1) Ensure the Complainant or their representative submits the complaint in writing and that the Complainant or their representative signs it. If the Complainant desires such assistance, the staff must offer to assist the Complainant in filling out ETA Form 8429. Staff must ensure the form is used for all complaints or apparent violations.
- 2) ensuring that the complaint contains sufficient information to initiate an investigation and/or attempt to assist the Complainant in obtaining any further information necessary to investigate the complaint
- 3) request all contact information from the Complainant (s), including but not limited to phone numbers and addresses (local or international), email address(es), other forms of communication used by the Complainant, such as WhatsApp, etc., and;
- 4) request the Complainant to contact the Complaint System Representative (“C.S.R.”) before leaving the area and explain the need to have current contact information of the Complainant for future communications.
- 5) assuring that the identity of the Complainant (s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint.
- 6) Any complaint in a reasonable form (letter or email) signed by the Complainant or their representative and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. The form should be filled out using all available information. The ES office receiving the complaint shall confirm receipt of the complaint in writing via regular mail or email sent to the Complainant and copied to the CSR, including a copy of the form. If the CSR determines that the Complainant has not provided sufficient information to investigate the matter expeditiously, it must request additional information from them.

Employment-related Law Complaints:

Employment-related laws refer to laws and implementing rules, regulations, and standards related to the employment relationship, such as those enforced by the WHD, OSHA, or other federal, state, or local agencies. Examples can include, but are not limited to, discrimination, employer-provided housing, employer-provided transportation, field sanitation, pesticides, retaliation, unpaid or underpaid wages, workplace safety, wrongful termination, etc.

Suppose the complaint filed is regarding employment-related law, is not alleging a violation of civil rights under the EEOC, and the Complainant is not an MSFW. In that case, the office must immediately refer the Complainant to the appropriate enforcement agency. The complaint must be logged, though no follow-up on the referral is required.

Suppose an MSFW files a complaint regarding an employment-related law. In that case, the ES office manager or the CSR must take the complaint, describing the alleged violation of the employment-related law in writing and shall attempt to resolve the issue informally at the local level unless it is determined that s/he must take immediate action or where it is determined that informal resolution

will be detrimental to the Complainant (s). In cases where it is determined that informal resolution will be detrimental to the Complainant (s), the CSR or the ES office manager shall immediately refer the complaint to the appropriate enforcement agency and must offer to refer the MSFW to other employment services if the Complainant is interested.

Suppose informal resolution at the local level is not reached within five (5) business days. In that case, the CSR or ES Office Manager shall refer the complaint to the appropriate enforcement agency, another public agency, legal aid, or consumer advocate organization for further assistance.

If it is determined that the complaint must be referred to a State or Federal agency, it must be immediately referred to the appropriate enforcement agency for prompt action. The representative must notify the Complainant of the enforcement agency to which the complaint was referred.

When a complaint alleges an employer from a different state has violated employment-related law, the ES office or SWA receiving the complaint must ensure the complaint form is fully completed, using the steps in ‘Filing Complaints’ above, and must immediately send a copy of the form and other relevant documents to the SWA in the other state. A copy of the referral letter must be sent to the Complainant and the ETA Regional office with jurisdiction over the sending and receiving state agencies via hard copy or email. The receiving SWA must process this complaint as if it was initially filed there. The ETA Regional Office with jurisdiction over the receiving SWA must follow up to ensure the complaint is processed in accordance with the regulations at 20 CFR 658.411.

Suppose the enforcement agency to which a complaint regarding an employment-related law is referred makes a final determination that the employer violated an employment-related law. The complaint is connected to a job order. In that case, the CDO must initiate procedures to discontinue services to the employer immediately in accordance with DOL regulations and must notify the Complainant and the Employer of this action.

Complaints alleging a violation of civil rights under the EEOC:

All complaints received by the CDO alleging unlawful discrimination or retaliation for protected activity in violation of EEOC regulations or violations of civil rights laws and regulations under, for example, Title VI of the Civil Rights Act, Section 188 of WIOA, on the basis of citizenship status or participant status or retaliation for protected activity must be logged and immediately referred to the State EO and the CSR must notify the Complainant of the referral in writing.

Employment Service Regulations Complaints (ES Complaints):

Employment Service (ES) regulations are the Federal regulations at 20 CFR parts 651, 652, 653, 654, and 658, and 29 CFR part 75.

When an ES Complaint is filed against an Employer or an ES Office, the proper office to process the complaint is the ES office serving the area in which the alleged violation occurred or where the employer is located. If the complaint is filed against more than one ES Office and concerns an agency-wide violation, the SWA representative or their designee must process the complaint.

When a complaint is against an employer in another State or one or multiple SWAs, the ES office(s) receiving the complaint must ensure the complaint form is fully completed, using the steps in ‘Filing Complaints’ above. It must immediately send a copy of the form and other relevant documents to the

SWA(s) in the other state(s). A copy of the referral letter must be sent to the Complainant and the ETA Regional office(s) with jurisdiction over the sending and receiving state agencies via hard copy or email. The SWA(s) which receives the complaint must process this complaint as if it was initially filed there. The ETA Regional Office(s) with jurisdiction over the receiving SWA(s) must follow up to ensure the complaint is processed in accordance with the regulations at 20 CFR 658.411.

If a complaint is filed in an ES office regarding an alleged violation of the ES regulations, the CSR shall investigate the complaint and attempt informal resolution immediately upon receipt. If the complaint is regarding an MSFW, resolution must be achieved within five working days after receipt of the complaint, within 5 days after all necessary information to investigate the complaint is received, or within 15 working days from when the complaint is received for non-MSFW. If resolution is not achieved in the prescribed timeframe, the CSR must send the complaint to the CDO for resolution or further action. The ES Office shall notify the Complainant and respondent in writing via regular mail or email of the determination of its investigation or referral.

When a non-MSFW complaint is filed regarding the ES regulations with a SWA, or when a non-MSFW complaint is referred from an ES office to the CDO, and the complaint is not transferred to an enforcement agency, the CSR must investigate and attempt to resolve the complaint immediately. Suppose the resolution by the CDO has not been accomplished within 30 working days after receipt or after all necessary information has been submitted to the CDO. In that case, the SWA official must make a written determination regarding the complaint and send electronic copies to the Complainant and respondent.

When an MSFW or their representative files a complaint regarding the ES regulations directly with the SWA, or it was referred to the CDO from an ES Office, the CSR shall investigate the complaint and attempt to resolve the complaint immediately. Suppose the CSR is unable to resolve the complaint within 20 business days after the complaint was received or after further investigation to obtain all necessary information. In that case, the CSR must make a written determination regarding the complaint and send copies of the determination to the Complainant and the respondent via certified mail and email.

All written determinations under ES regulations shall include the following:

- 1) the results of the investigation;
- 2) the conclusions related to the complaint allegations,
- 3) an explanation of why the resolution of the complaint was not reached, if applicable, and
- 4) If the complaint is against the CDO, or if the complaint is against an Employer and it was determined that the employer had not violated the ES regulations, the Complainant shall be notified of the right to request a hearing in writing within 20 business days after the date the determination is received.

Suppose the CDO receives a written request for a hearing by regular mail or email within 20 business days of the Complainant's Receipt of the determination regarding the complaint. In that case, the CDO shall refer the complaint to a state hearing official and notify the Complainant (s) and respondent(s) of the following:

- 1) the date, time, and place of hearing, if known;

- 2) that any party may be represented at the hearing by an attorney or other representative;
- 3) that the parties may present witnesses and documentary evidence at the hearing;
- 4) that the parties may cross-examine opposing witnesses at the hearing;
- 5) that the decision on the complaint will be based on the evidence presented at the hearing;
- 6) that the assigned state hearing official may reschedule the hearing upon request of a party or their representative, and;
- 7) that the party requesting the hearing may withdraw the request for hearing in writing before the hearing with the consent of the SWA and the State hearing official.

Suppose the CDO or the State hearing official, after the hearing, determines that the employer has violated the ES regulations and has or is using the ES. In that case, the determination must also state that the CDO will initiate procedures to discontinue services to the employer in accordance with DOL regulations. A complaint regarding the ES regulations must be processed to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

Apparent Violations

Apparent violation means a suspected violation of employment-related laws or employment service (ES) regulations by an employer as previously described in this section, which an ES staff member observes, has reason to believe, or is in receipt of such information from another party. Complaints where the party wishes to remain anonymous must be treated as apparent violations. The identity of any persons who furnish information relating to, or assisting in, an investigation of an apparent violation must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the apparent violation.

If an ES staff member observes, has reason to believe, or receives information regarding an apparent violation, except as part of an unannounced field check (as defined at 20 CFR 651.10 “Field checks”), the staff member must document the apparent violation in detail using ETA Form 8429 and refer it to the ES Office Manager and/or the local Kentucky Career Center (KCC) complaint system representative (C.S.R.), who must ensure the apparent violation is documented in the Complaint System log.

If the employer has filed any job order with the ES office within the past 12 months, the ES office must attempt an informal resolution. If the employer has filed a job order with the ES office within the past 12 months and the apparent violation affects an MSFW(s), the ES office staff must attempt an informal resolution. Suppose an informal resolution is not achieved within five business days. In that case, the CSR or ES office manager must refer it to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

Suppose the employer has not filed a job order with the ES office during the past 12 months. In that case, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

Apparent violations of nondiscrimination laws must be processed according to the procedures described in Grievance, Complaint, and Appeal Procedures for Kentucky’s Workforce Innovation

and Opportunity Act Programs Section 8. They must be logged and immediately referred to the State-level E.O. Officer. The Complaint System Representative must notify the Complainant of the referral in writing.

Complaint Resolution

A complaint is considered resolved when the Complainant indicates satisfaction with the outcome in writing; the Complainant does not elevate the complaint to the next level of review; the Complainant or their authorized representative fails to respond to a written request for more information within 20 working days, or in cases involving MSFWs, 40 working days; all available options for review are exhausted; or a final determination has been made by the enforcement agency to which the complaint was referred.

Suppose the Complainant or the Complainant's authorized representative fails to respond to the request for information. In that case, the Complainant or the Complainant's authorized representative may reopen the case within one year after the SWA has closed it.

Discontinuation of services means that an employer, agent, farm labor contractor, joint employer, or successor in interest, as defined in this section, cannot participate in or receive any Wagner-Peyser Act employment service provided by the ES to employers pursuant to 20 CFR Part 652 & 20 CFR Part 653.

Hearing and appeals process:

Pursuant to 20 CFR Sec. 658.417-18, if the ES receives a request for a hearing within 20 business days after the receipt of notification, it shall be referred to a State Hearing Official for a hearing. The State Hearing Official's decision shall be the final state-level decision. All decisions of a State Hearing Official must be accompanied by a written notice informing the parties that they may appeal the decision within 20 business days of the certified date of receipt of the decision.

Pursuant to KRS 13B.020(4), the State Hearing Official shall comply with federal law.

(1)A party may appeal the final decision of the State Hearing Official in writing with the Regional Administrator pursuant to 20 CFR 658.418(c).

When a complainant is an English Language Learner (E.L.L.), all written correspondence with the Complainant under part 658, subpart E, must include a translation into the Complainant's native language—20 CFR § 658.410 (n).

A complainant may designate an individual to act as their representative throughout the filing and processing of a complaint—20 CFR § 658.410 (o).

References

- 20 CFR 658.410(a)
- 20 CFR 658.410(j)
- 20 CFR 658.410(m)
- 20 CFR 658.410(d)

- 20 CFR 658.410(g) & (h)
- 20 CFR 658.411(a)
- 20 CFR 658.411(a)(3)
- 20 CFR 658.411(a)(4)
- 20 CFR 658.411(b)(1)(ii)(B)
- 20 CFR 658.411(b)(1)(ii)(C)
- 20 CFR 658.411(c)
- 20 CFR 651.10
- 20 CFR 658.411(d)(1)(i)
- 20 CFR 658.411(d)(1)(v)
- 20 CFR 658.411(d)(1)(iv)
- 20 CFR 658.411(d)(1)(ii)
- 20 CFR 658.411(d)(2)(ii)
- 20 CFR 658.411(d)(4)
- 20 CFR 658.419
- 20 CFR 658.411(d)(5)
- 20 CFR 658.419(b)
- 20 CFR 658.411(e)

PROCESS FLOW

(Section 12)

MSFWs may file a complaint within 2 years of the alleged occurrence.

A complaint may be filed with any appropriate ES staff at a One-Stop Operator during regular office hours or in the field.

Opportunity for informal resolution or hearing within 60 days of the filing of the grievance, absent an agreement between the parties extending this timeframe.

The Hearing Officer shall issue a written final order within 30 business days of the hearing, absent an agreement between the parties extending this timeframe.

Either party may appeal to the Regional Administrator within 20 business days of the certified date of receipt of the decision.

Section 13. Appeals related to rights of Migrant and Seasonal Farm Worker Program

Notification of Appeal Rights and Procedures

Upon the determination that an individual is potentially eligible for services, the appropriate OVR staff must notify the individual of their potentially eligible status, of their appeal rights, and the Client Assistance Program. Counselors shall supply each applicant with a copy of the Consumer Guide during the application process and explain the appeal rights and procedures in a way the individual can fully understand. Counselors shall advise all applicants and eligible individuals of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives. The individual will be reminded of their appeal rights and the Client Assistance Program when they are determined eligible, when developing the Individualized Plan for Employment, whenever services are reduced, suspended, or ceased, and as appropriate throughout the rehabilitation process, including at case closure.

Informal Administrative Review

Applicants and consumers may utilize an informal administrative review process to resolve disputes prior to an impartial hearing but are in no way required to do so. Once elected, the individual may halt the informal proceedings at any time and pursue an impartial hearing. Even when an informal process is chosen, an impartial hearing must be conducted within sixty days of the request unless a satisfactory resolution is reached prior to that time or both parties agree to an extension of time not to exceed one year. An informal administrative review consists of a complete review of the case documentation and an examination of the individual's complaint, including a determination of the degree to which the office's policies and procedures were observed in the conduct of the case. It will also include a personal interview with the individual and, or their representative and pertinent Office staff involved. The Director of Field Services or designee will select an administrator from a district not involved in the action. The administrator will schedule and conduct the review within ten days, either in person or by teleconference. The results of the informal review may support the actions of the counselor in the case or support the claims of the individual. Within five days, the administrator will provide a written determination to the individual, their representative, and the office.

The written determination will state the facts upon which the decision is based and include procedures for requesting mediation and / or an impartial hearing and information regarding the Client Assistance Program. The informal review decision is binding for involved Office personnel.

Mediation

The applicant or eligible individual may choose to utilize mediation to resolve disputes prior to an impartial hearing but is in no way required to do so. Once elected, the individual may halt the informal proceedings at any time and pursue an impartial hearing. Even when an informal process is chosen, an impartial hearing must be conducted within sixty days of the request unless a satisfactory resolution is reached prior to that time or both parties agree to an extension of time not to exceed one year. Mediation is an alternative form of dispute resolution in which a neutral third party facilitates a voluntary agreement between the disputing parties.

The mediation process is voluntary on the part of the consumer and the office. The office shall maintain a list of qualified impartial mediators trained in effective mediation techniques. These mediators will be knowledgeable in the laws (including regulations) relating to the provision of

Vocational Rehabilitation services under the Rehabilitation Act of 1973, as amended, as well as disability issues in general. The Director of Field Services or designee shall choose a mediator from this list and schedule a mediation meeting within five days. The specific meeting place must be agreed upon by all parties involved in the dispute and should include accommodations for the full participation of the individual. The mediator will initiate the terms and guidelines for the mediation process, which will be reviewed and approved by both parties prior to the meeting.

Consumers can withdraw from mediation at any time and request an impartial hearing or an informal administrative review. A dispute may be resolved prior to mediation. Mediation cannot be used to deny or delay the applicant's or eligible individual's right to an impartial hearing or to deny any other right afforded under the Rehabilitation Act of 1973, as amended.

The Parties

The parties involved in the session will be the mediator, the consumer, their representative, and pertinent Office staff. The office will have a representative in attendance who is authorized to bind the office to an agreement.

Mediation Session

The mediator will open the session, and each party will be provided an opportunity to present their position. The mediator will ask questions to help the parties understand each other and the issues and to identify areas of impasse. The purpose is to open up communication, identify common ground, and brainstorm possible solutions. At times, it may be necessary for the mediator to meet privately in caucus with the individual parties to facilitate open communication.

Mediation Agreement

Any agreement reached by the parties during this mediation process shall be set forth in a written mediation agreement. The mediator will act as a scribe for the agreement, which the parties will sign. The mediation agreement will be effective immediately unless the consumer wishes to have the agreement reviewed by counsel or representative during a three-day review period. Suppose the consumer discovers a problem with the agreement during the three-day review period. In that case, they can request to return to mediation or move forward with an impartial hearing or informal administrative review.

Confidentiality

Discussions during mediation shall be held in strict confidence and shall not be used as evidence in any subsequent review, hearing, or civil procedure. Parties involved in mediation may be required to sign a confidentiality pledge prior to beginning the process. Any notes or papers created and shared during the mediation process will be shredded, excluding the mediation agreement.

Administrative Hearing

An impartial hearing provides an individual who is dissatisfied with an Office action or inaction the opportunity to present evidence and information before an impartial hearing officer who will decide based on the evidence presented. "Administrative Hearing" or "hearing" means any formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges, or immunities of a named person. OVR will conduct an administrative hearing when the individual elects not to participate in mediation or if the

mediation does not result in an agreement. At the time of requesting an impartial hearing, the applicant or eligible individual shall provide an issue statement for the hearing officer and identify accommodations required for the hearing (e.g., accessible formats for printed materials or an interpreter). An impartial hearing must be conducted within sixty days of this request unless an informal resolution is achieved or the parties agree to a specific extension of time, not to exceed one year. Requests for informal administrative review or mediation begin the 60-day time clock for conducting a hearing.

An impartial hearing officer will conduct the hearing randomly selected from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General, approved by the Office and the Statewide Council for Vocational Rehabilitation. The hearing officer must know about the delivery of vocational rehabilitation services and the related Federal and State laws and administrative regulations. The hearing officer will not be involved in any hearing in which the officer has been involved in previous decisions regarding the applicant or eligible individual, nor in any decision in which personal or financial interest might interfere with objectivity.

Conduct of hearing

The following is a summary of the conduct of a fair hearing. For specific details, consult KRS Chapter 13B.

Pre-hearing Conference:

The hearing officer may convene and conduct a pre-hearing conference upon reasonable notice to all parties. This conference may clarify issues, rule on witnesses, and discuss other matters that will promote the orderly and prompt conduct of the hearing.

Hearing:

The hearing officer will preside over and regulate the proceedings. The hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination of witnesses, and submit rebuttal evidence. The applicant or eligible individual may participate in person and/or be represented by an advocate or legal counsel.

Other parties must participate in person and be represented by legal counsel.

Decision

The hearing officer must complete and submit, to both parties as well as the agency head, the written recommended order within sixty (60) days of receipt of the transcript of the hearing unless both parties agree to a time extension. Either party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the agency head. The agency head shall consider the record, including the recommended order and any timely exceptions filed to the recommended order. The agency head shall issue the final order within ninety (90) days after the hearing office submits a recommended order.

Confidentiality

34 CFR 361.38 contains federal requirements related to maintaining confidentiality and protecting, using, and releasing information.

Client Assistance Program

The office shall advise all potentially eligible individuals, applicants, and those receiving services about the availability, purposes, and contact information of the Client Assistance Program. The Client Assistance Program may be reached at its website, Kentucky Protection and Advocacy—Online (kypa.net), or by calling 1-800-372-2988.